

**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY
NRS 233B.0608 and NRS 233B.0609**

LCB File No. R156-22

1. Background

LCB File No. R156-22 revises provisions governing the taxation of tangible personal property purchased for resale and given away with complimentary food, meals or beverages; and provides other matters properly relating thereto.

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.

2. A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

The Department of Taxation prepared and disseminated a questionnaire seeking information from small businesses regarding the possible impact of LCB File No R156-22. The proposed language and questionnaire were dispersed to the following:

- Emailed by the Department to 188 members of its interested parties list.
- Mailed to 10 Rural Businesses
- Emailed by the Nevada Taxpayers Association to its list of interested taxpayers.

The content of the responses is summarized below:

- The statements represent the concerns of the 6287 restaurants in Nevada regarding the proposed regulatory changes to NRS233B.0382. Most of these restaurants are small businesses with 50 or fewer employees. They argue that the proposed changes would not benefit restaurants and would instead have a negative economic impact. Specifically, they highlight the expense and burden of reprogramming POS systems to comply with the new regulations, even if they don't give away food. Additionally, they anticipate unintended consequences such as a reduction in philanthropic donations and employee meals, as well as potential surcharges for customers. They suggest considering factors such as tax revenue, training, and audits when evaluating the impact of these changes.

Anyone interested in obtaining a copy of the completed small business impact questionnaire used for this summary, can contact:

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3. The manner in which the analysis was conducted, including the methods used to determine the impacts of the proposed regulation on small businesses.

The Department analyzed the industry responses to small business impact questionnaires and other correspondence related to LCB Draft of Proposed Regulation R156-22. The Department analyzed the proposed language and used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulatory changes.

Despite the feedback and concerns from small businesses, this regulation confirms what was amended into statute in 2013 and updates regulatory language that is no longer Nevada law. This regulation does not impose additional requirements on this industry since 2013.

4. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate:

Direct and indirect adverse effects

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect adverse economic effect on small businesses. This law has been in existence since 2013.

Direct and indirect beneficial effects

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect

beneficial economic effect on small businesses. This law has been in existence since 2013.

5. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

The proposed regulation presents no reasonable, foreseeable or anticipated adverse impact to small businesses; therefore, no efforts were required to reduce the impact on small businesses. This law has been in existence since 2013.

6. The estimated cost to the agency for enforcement of the proposed regulation.

The proposed regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

7. If the proposed 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 permanent regulation does not include new fees or increase an existing fee.

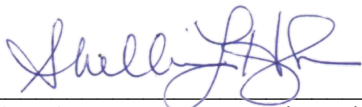
8. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

The proposed regulation does not overlap or duplicate any regulation of other federal, state or local government entities.

9. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.

The Department has determined that there will be no adverse impacts to small businesses based on its analysis of the proposed regulation. This law has been in existence since 2013.

I hereby certify, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that this statement was properly prepared, and the information contained herein is accurate.



Shellie Hughes, Executive Director

March 11, 2024