

CHAPTER.....

AN ACT relating to taxation; revising provisions governing the application of sales and use taxes to food, meals or nonalcoholic drinks provided on a complimentary basis to certain persons; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law generally exempts food for human consumption from sales and use taxes 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)

The Nevada Supreme Court has determined that under the food exemption, a business entity is exempt from paying use taxes on prepared food intended for immediate consumption that the business entity provides to its employees and patrons free of charge. However, the Court has also determined that such complimentary meals may be subject to sales taxes when consideration is properly demonstrated. (*Sparks Nugget, Inc. v. State ex rel. Department of Taxation*, 124 Nev. 159 (2008))

This bill provides that consideration is not received for the complimentary portion of any food, meals or nonalcoholic drinks provided on a complimentary basis, in whole or in part, to the employees, patrons or guests of a retailer and, thus, the sales tax would not apply to the complimentary portion of such food, meals or nonalcoholic drinks. This bill further provides that the complimentary portion of any food, meals or nonalcoholic drinks provided on a complimentary basis, in whole or in part, to the employees, patrons or guests of a retailer does not lose its status as food for human consumption and, thus, is exempt from the use tax. **Section 8** of this bill provides that the provisions of this bill become effective upon passage and approval.

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

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 360B.480 is hereby amended to read as follows:

360B.480 1. “Sales price” means the total amount of consideration, including cash, credit, property and services, for which personal property is sold, leased or rented, valued in money, whether received in money or otherwise, and without any deduction for:

- (a) The seller’s cost of the property sold;
- (b) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;



(c) Any charges by the seller for any services necessary to complete the sale, including any delivery charges which are not stated separately pursuant to subsection 1 of NRS 360B.290 and excluding any installation charges which are stated separately pursuant to subsection 2 of NRS 360B.290; and

(d) Except as otherwise provided in subsection 2, any credit for any trade-in.

2. The term does not include:

(a) Any delivery charges which are stated separately pursuant to subsection 1 of NRS 360B.290;

(b) Any installation charges which are stated separately pursuant to subsection 2 of NRS 360B.290;

(c) Any credit for any trade-in which is:

(1) Specifically exempted from the sales price pursuant to chapter 372 or 374 of NRS; and

(2) Stated separately pursuant to subsection 2 of NRS 360B.290;

(d) Any discounts, including those in the form of cash, term or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by the purchaser on a sale;

(e) Any interest, financing and carrying charges from credit extended on the sale of personal property, if stated separately pursuant to subsection 2 of NRS 360B.290; ~~and~~

(f) Any taxes legally imposed directly on the consumer which are stated separately pursuant to subsection 2 of NRS 360B.290 ~~H~~; *and*

(g) The complimentary portion of any food, meals or nonalcoholic drinks provided on a complimentary basis, in whole or in part, to the employees, patrons or guests of a retailer.

3. The term includes consideration received by a seller from a third party if:

(a) The seller actually receives consideration from a person other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(b) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(c) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(d) Any of the following criteria is satisfied:

(1) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, and the coupon, certificate or other documentation is authorized, distributed or granted by a third party with the understanding that



the third party will reimburse any seller to whom the coupon, certificate or other documentation is presented.

(2) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. For the purposes of this subparagraph, a preferred customer card that is available to any patron does not constitute membership in such a group.

(3) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

Sec. 2. Chapter 372 of NRS is hereby amended by adding thereto a new section to read as follows:

In administering the provisions of this chapter, the Department shall consider the intent of the Legislature as hereby expressed that:

1. The complimentary portion of any food, meals or nonalcoholic drinks provided on a complimentary basis, in whole or in part, to the employees, patrons or guests of a retailer is not being furnished, prepared or served for consideration within the meaning of paragraph (c) of subsection 3 of NRS 372.060; and

2. For the purposes of the tax on the use or other consumption of tangible personal property, the complimentary portion of any such food, meals or nonalcoholic drinks does not lose its tax-exempt status as food for human consumption as the result of being provided on a complimentary basis, in whole or in part, to the employees, patrons or guests of the retailer.

Sec. 3. Chapter 374 of NRS is hereby amended by adding thereto a new section to read as follows:

For the purposes of the tax on the use or other consumption of tangible personal property, the complimentary portion of any food, meals or nonalcoholic drinks provided on a complimentary basis, in whole or in part, to the employees, patrons or guests of the retailer does not lose its tax-exempt status as food for human consumption as the result of being so provided.

Sec. 4. NRS 374.065 is hereby amended to read as follows:

374.065 1. "Sale" means and includes any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

2. "Transfer of possession," "lease," or "rental" includes only transactions found by the Department to be in lieu of a transfer of title, exchange or barter.

3. "Sale" includes:



(a) The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing or imprinting.

(b) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

(c) The furnishing, preparing, or serving for a consideration of food, meals or drinks ~~H~~, *but does not include the complimentary portion of any food, meals or nonalcoholic drinks provided on a complimentary basis, in whole or in part, to the employees, patrons or guests of a retailer.*

(d) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(e) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication.

Sec. 5. NRS 374.635 is hereby amended to read as follows:

374.635 1. If the Department determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in the records of the Department and shall certify to the board of county commissioners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the board of county commissioners, the excess amount collected or paid must, after being credited against any amount then due from the person in accordance with NRS 360.236, be refunded to the person or his or her successors, administrators or executors.

2. Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to NRS 374.190 to 374.260, inclusive, ~~and 374.727~~ must be credited or refunded by the county to the purchaser, subject to the requirements of NRS 360.236.

Sec. 6. NRS 374.645 is hereby amended to read as follows:

374.645 No credit or refund of any amount paid pursuant to NRS 374.190 to 374.260, inclusive, ~~and 374.727~~ may be allowed on the ground that the storage, use or other consumption of the property is exempted pursuant to NRS 374.350, unless the person who paid the amount reimburses his or her vendor for the amount of the sales tax imposed upon his or her vendor with respect to the sale of the property and paid by the vendor to the county.



Sec. 7. NRS 372.727 and 374.727 are hereby repealed.

Sec. 8. This act becomes effective upon passage and approval and applies to food, meals and non-alcoholic drinks provided on a complimentary basis on and after the effective date of this act.

