

**ADOPTED REGULATION OF THE
DEPARTMENT OF MOTOR VEHICLES**

LCB File No. R105-01

Effective January 1, 2002

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

AUTHORITY: §§1-26 and 28, NRS 365.110; §27, NRS 365.600.

Section 1. Chapter 365 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 27, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 27, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Dealer” has the meaning ascribed to it in NRS 365.020.*

Sec. 4. *“Department” means the department of motor vehicles.*

Sec. 5. *“Governing body” means the governmental entity that has the authority to make decisions on behalf of a tribe.*

Sec. 6. *“Motor vehicle” has the meaning ascribed to it in NRS 365.050.*

Sec. 7. *“Motor vehicle fuel” has the meaning ascribed to it in NRS 365.060.*

Sec. 8. *“Reservation” means any land that:*

1. Is located within the boundaries of this state; and

2. Is set aside for use by a tribe, including, without limitation:

(a) An Indian reservation;

(b) An Indian colony;

(c) Any land which is owned in fee by or held in trust for a tribe; and

(d) Any other land which is under the jurisdiction of a tribe.

Sec. 9. *“Supplier” has the meaning ascribed to it in NRS 365.084.*

Sec. 10. *“Tribal member” includes an enrolled member of a tribe.*

Sec. 11. *“Tribe” means any tribe, band, nation or group of Indians that is recognized by the Federal Government as having a government-to-government relationship with the United States.*

Sec. 12. 1. *The department may enter into an agreement with the governing body of a tribe to provide for the collection of taxes on taxable sales of motor vehicle fuel that occur on the reservation of the tribe.*

2. An agreement entered into pursuant to subsection 1:

(a) Is valid for the period set forth in the agreement, beginning on the date the agreement is executed; and

(b) Will set forth:

(1) The names and signatures of the parties to the agreement;

(2) The manner in which the taxes must be calculated, including the method to be used to determine the percentage of taxable sales to total sales of motor vehicle fuel or any other method for allocating the taxes that is agreed upon by the parties;

(3) The method for reevaluating the manner in which the taxes are calculated pursuant to subparagraph (2); and

(4) The manner in which the parties may:

(I) Verify the terms and conditions of the agreement; and

(II) Rescind the agreement.

3. As used in this section, “taxable sale” means a sale of motor vehicle fuel for which a tax is imposed pursuant to chapter 365 of NRS, other than a sale of motor vehicle fuel to a governing body or tribal member for exclusive use by the governing body or tribal member.

Sec. 13. *1. If the governing body of a tribe does not enter into an agreement pursuant to section 12 of this regulation, each supplier who sells motor vehicle fuel on the reservation of the tribe shall collect the tax imposed on that sale pursuant to chapter 365 of NRS.*

2. If a tribe specified in subsection 1 pays the tax on the sale of motor vehicle fuel pursuant to chapter 365 of NRS, the tribe may, in the manner prescribed by the department, apply to the department for a refund of the tax.

3. In determining the amount of a refund pursuant to subsection 2, the department will use a method of calculation that is:

(a) Prescribed by the department; or

(b) Set forth in an agreement entered into pursuant to section 12 of this regulation.

Sec. 14. *The department will consider a person to be habitually delinquent for the purpose of NRS 365.290 if he commits any of the following violations at least twice within 12 consecutive months or both of the following violations at least once within 12 months:*

1. The failure to file a monthly tax return during the period set forth in NRS 365.170 or 365.175, unless the department finds that:

(a) The failure was caused by circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care; and

(b) The person has paid any penalty and interest imposed by the department because of the failure to file the tax return during the period for filing the return; or

2. The failure to submit to the department any tax collected by the person pursuant to NRS 365.170 to 365.192, inclusive, during the period for the submission of the tax set forth in NRS 365.170 or 365.175.

Sec. 15. The department may refuse to issue a license pursuant to NRS 365.280 to a person who:

1. Fails to provide complete and accurate information on the application as required by the department;

2. Makes a material misstatement on the application;

3. Before applying for the license, was issued a license as a dealer that was canceled, suspended or revoked for cause in any state, district, territory or possession of the United States or a foreign country; or

4. Applies as a subterfuge for the real party in interest whose license described in subsection 3 has been canceled, suspended or revoked for cause.

Sec. 16. If the department notifies a supplier that another supplier is not licensed in accordance with chapter 365 of NRS, the supplier shall not sell motor vehicle fuel to the unlicensed supplier without collecting the applicable taxes imposed pursuant to NRS 365.175 to 365.192, inclusive.

Sec. 17. During the initial 2 years that a dealer or supplier conducts his business, the department will, every 6 months, review his monthly tax returns filed pursuant to chapter 365 of NRS to determine whether the estimated maximum monthly tax is accurate. If the department determines that the estimated maximum monthly tax is not accurate, the department will revise the amount of security required for the dealer or supplier in accordance with its review.

Sec. 18. 1. *The department will review annually the estimated maximum monthly tax for each dealer or supplier who has conducted his business for at least 2 years before the review is conducted. The department will conduct the review for the 24 months immediately preceding the review to determine whether the estimated maximum monthly tax is sufficient. If the department determines that the estimated maximum monthly tax is not sufficient, the department will increase the amount of security required for that dealer or supplier in accordance with its review. The dealer or supplier shall increase his security in the amount required by the department within 60 days after the department notifies him of the increase.*

2. *Except as otherwise provided in subsection 2 of NRS 365.290 and section 19 of this regulation, the amount of security that is increased pursuant to subsection 1 will equal at least three times the increased estimated maximum monthly tax, but must not be less than \$1,000.*

Sec. 19. 1. *A dealer or supplier who complies with the requirements set forth in subsection 2 may submit a written request to the department for a reduction in the amount of security required if the required amount would otherwise be more than \$5,000. Upon receipt of such a request, the department may reduce the required amount to an amount that is:*

(a) Not less than the amount of the maximum monthly tax the dealer or supplier reported to the department during the 2 years immediately preceding the date of his request for a reduction; or

(b) Equal to \$5,000,

whichever is greater.

2. *A dealer or supplier who has filed tax returns pursuant to chapter 365 of NRS for at least 3 calendar years may submit a request pursuant to subsection 1 if, during the 3 years immediately preceding the date of the request, he:*

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- (a) Filed in a timely manner the tax returns required pursuant to chapter 365 of NRS;*
- (b) Paid in a timely manner all taxes and assessments owed to the State of Nevada pursuant to chapter 365 of NRS; and*
- (c) Has been audited at least once by the department during the 2 calendar years immediately preceding the date of the request.*

3. For the purposes of subsection 2, a dealer or supplier who:

- (a) Because of a clerical error, underpaid taxes by not more than 5 percent; and*
 - (b) Within 30 days after being notified by the department of the underpayment, paid the taxes owed and any penalty and interest imposed by the department,*
- shall be deemed to have paid those taxes in a timely manner.*

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Sec. 20. 1. If the department is notified that a surety bond of a dealer or supplier has been or may be canceled, the department will, to determine the amount of security the dealer or supplier must provide, review the monthly tax returns of the dealer or supplier:

- (a) For the 24 months immediately preceding the review; or*
- (b) If he has been in business less than 24 months, for the period he has operated his business.*

2. Within 15 days after the department receives a notice that a surety bond specified in subsection 1 has been or may be canceled, the department will notify the dealer or supplier of the amount of security required to retain his license. If the dealer or supplier fails to provide the security required by the department within 15 days after he receives a notice from the department setting forth the amount of security required, the department will revoke the license of the dealer or supplier.

Sec. 21. 1. *If the last day of a month occurs on a Saturday, Sunday or legal holiday, the statement required to be filed by a dealer pursuant to NRS 365.170 or a supplier pursuant to NRS 365.192 must be filed not later than the next business day after that Saturday, Sunday or legal holiday.*

2. *The payment by a dealer or supplier of a tax imposed pursuant to chapter 365 of NRS shall be deemed received:*

(a) *If delivered by mail, on the date shown by the cancellation mark stamped by the United States Postal Service or the postal service of any other country upon an envelope containing the payment properly addressed to the department; or*

(b) *If delivered by a private postal service, on the business day preceding the date of actual delivery.*

Sec. 22. 1. *Except as otherwise provided in subsection 2, if a dealer or supplier is required to file with the department a return, report or statement pursuant to chapter 365 of NRS and the return, report or statement is not accompanied by the payment of any tax that the dealer or supplier is required to remit with the return, report or statement pursuant to that chapter, the return, report or statement shall be deemed delinquent and the dealer or supplier may not retain any fee for collecting the tax pursuant to NRS 365.330.*

2. *The provisions of subsection 1 do not apply to a dealer or supplier who receives an extension of time to file a return, report or statement pursuant to NRS 365.135.*

Sec. 23. 1. *If a person applies to the department for a refund of any tax on motor vehicle fuel or fuel for jet or turbine-powered aircraft pursuant to NRS 365.370, the person must submit with his application a receipt obtained from the person from whom the motor*

vehicle fuel or fuel for jet or turbine-powered aircraft was purchased. The receipt must include:

- (a) The date of the purchase;*
- (b) The county in which the purchase was made;*
- (c) The number of gallons purchased and used for a purpose specified in NRS 365.370;*

and

(d) A statement indicating that the tax was paid to the person from whom the motor vehicle fuel or fuel for jet or turbine-powered aircraft was purchased.

2. As used in this section, "fuel for jet or turbine-powered aircraft" has the meaning ascribed to it in NRS 365.035.

Sec. 24. 1. A person who uses motor vehicle fuel to propel a motor vehicle off the public highways of this state may obtain a refund of any tax paid by him pursuant to NRS 365.175 to 365.192, inclusive, for that portion of the motor vehicle fuel purchased which is used off those public highways.

2. A person who requests a refund pursuant to subsection 1 shall:

(a) If the motor vehicle is equipped with a computer or other device that is capable of computing the number of gallons of motor vehicle fuel consumed off the public highways of this state, submit to the department the information provided by the computer or other device as evidence of the amount of motor vehicle fuel consumed off the public highways of this state; or

(b) If the motor vehicle is not equipped with a computer or other device specified in paragraph (a):

(1) Compute the amount of motor vehicle fuel consumed off the public highways of this state by dividing the number of miles the vehicle was operated off those public highways by the average number of miles traveled per gallon of motor vehicle fuel consumed by the motor vehicle; and

(2) Submit to the department the information which is required to establish to the satisfaction of the department that the information used to make the computation required by subparagraph (1) is accurate.

Sec. 25. If a motor vehicle with auxiliary equipment consumes motor vehicle fuel and there is no auxiliary motor or separate fuel tank for the auxiliary motor, the operator of the motor vehicle must, to obtain a refund pursuant to NRS 365.370, submit evidence satisfactory to the department to establish the amount of motor vehicle fuel used to operate the auxiliary equipment.

Sec. 26. 1. Except as otherwise provided in subsection 2, if any payment of a tax pursuant to chapter 365 of NRS is received by the department within the period prescribed for the payment of that tax pursuant to that chapter and the payment is subsequently dishonored upon presentation by the department to a bank or other financial institution, the department will consider the payment to be delinquent.

2. The department will consider a payment specified in subsection 1 to be made on the date that it is originally tendered to the department if the person who made the payment submits evidence satisfactory to the department that the payment was dishonored because of the fault or error of the bank or financial institution.

Sec. 27. 1. Except as otherwise provided in subsection 2, if the department imposes an administrative fine pursuant to NRS 365.600, the department will impose that fine for

violations occurring within the 3 years immediately preceding the most recent violation according to the following schedule:

- (a) For a first offense, a fine of not less than \$100 or more than \$500.*
- (b) For a second offense, a fine of not less than \$500 or more than \$1,000.*
- (c) For a third offense, a fine of not less than \$1,000 or more than \$1,500.*
- (d) For a fourth or subsequent offense, a fine of not less than \$1,500 or more than \$2,500.*

2. The department may impose a fine of not less than \$1,500 or more than \$2,500 for:

- (a) Any violation of subsection 1 or 2 of NRS 365.500 or NRS 365.505 to 365.530,*

inclusive; or

- (b) Any violation committed by:*

(1) An exporter who sells or distributes motor vehicle fuel in this state or any other person who engages in business in this state as a supplier without obtaining a supplier's license; or

(2) A supplier who, after receiving a notice from the department that a supplier is not licensed pursuant to chapter 365 of NRS, sells special fuel to the unlicensed supplier without collecting the tax imposed pursuant to NRS 365.175 to 365.192, inclusive.

3. A person who has been fined pursuant to NRS 365.600 shall pay the fine to the department not later than the date specified in the notice of violation, unless he requests a hearing pursuant to subsection 1 of that section.

4. Upon the failure of a person to pay a fine imposed pursuant to this section when it becomes due, the department may suspend, revoke or refuse to issue a license to that person pursuant to this chapter.

5. As used in this section, "exporter" has the meaning ascribed to it in NRS 365.031.

Sec. 28. This regulation becomes effective on January 1, 2002.

NOTICE OF ADOPTION OF REGULATION

The Department of Motor Vehicles and Public Safety adopted regulations assigned LCB File No. R105-01, which pertain to chapter 365 of the Nevada Administrative Code on January 01, 2002. A copy of the regulations as adopted, is attached hereto.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066 LCB FILE R105-01 INFORMATIONAL STATEMENT

Regulations under NAC 365

Subject: Collection of taxes on Motor Vehicle Fuel, Aviation Fuel, fuel for Jet and Turbine powered Aircraft

1. Public Comment was solicited through:

ESMERALDA COUNTY
GOLDFIELD PUBLIC LIBRARY
PO BOX 430
(FOURTH & CROOK STREET)
GOLDFIELD NV 89013

EUREKA BRANCH LIBRARY
PO BOX 293
(10190 MONROE STREET)
EUREKA, NV 89316

LANDER COUNTY
BATTLE MOUNTAIN BRANCH LIBRARY
625 BROAD STREET
BATTLE MOUNTAIN, NV 89820

LINCOLN COUNTY LIBRARY
PO BOX 330
(93 MAIN STREET)
PIOCHE NV 89043

MINERAL COUNTY LIBRARY
PO BOX 1390
(FIRST & A STREET)
HAWTHORNE, NV 89415

PERSHING COUNTY LIBRARY
PO BOX 781
(1125 CENTRAL AVENUE)
LOVELOCK, NV 89419

STOREY COUNTY LIBRARY
PO BOX 14
(95 SOUTH R STREET)
VIRGINIA CITY NV 89440

NEVADA DMV & PS
305 GALLETTI WAY
RENO NV 89512

NEVADA DMV & PS
8250 W. FLAMINGO
LAS VEGAS NV 89147

NEVADA DMV & PS
3920 EAST IDAHO STREET
ELKO NV 89801

NEVADA DMV & PS
PO BOX 248
178 AVENUE F
ELY NV 89301

NEVADA DMV & PS
973 W WILLIAMS ST
FALLON NV 89406

NEVADA DMV & PS
4021 W CAREY
NORTH LAS VEGAS NV 89030

NEVADA DMV & PS
PO BOX 1912
TONOPAH NV 89049

NEVADA DMV & PS
1694 COUNTY ROAD
MINDEN NV 89423

NEVADA DMV & PS
3505 CONSTRUCTION WAY
WINNEMUCCA NV 89445

NEVADA DMV & PS
555 WRIGHT WAY
CARSON CITY NV 89711-0400

NEVADA DMV & PS
215 WEST BRIDGE STREET
YERINGTON NV 89447

NEVADA STATE LIBRARY
401 NORTH CARSON
CARSON CITY, NV 89710

In addition to the above, a copy of the Notice of Intent to Act upon a Regulation together with a copy of the proposed regulation was mailed to each of the Indian Tribes domiciled in Nevada.

Summary of Public Response:

Public response focused on the redefinition of “Dealer” where the sale of motor vehicle fuel was removed from that definition by the legislature in AB584. However, the term “Motor Vehicle Fuel” became a part of the definition of “Retailer” and was also included in the definition of “Supplier”. This redefinition of “Dealer” clarified that definition and removed some ambiguity. Another concern, was the requirement in the proposed regulation that if a Tribe chooses not to enter into an agreement with the Department, any refund of taxes collected on Indian fuel purchases on the Reservation would have to be refunded through an application by or through the tribe or its members. The commenters claim this provision of the proposed regulations would be a violation of the ruling of the Court in Goodman Oil. In their written comments, the Pyramid Lake Paiutes and the Battle Mountain Band refer to Goodman Oil v. Idaho State Tax Commission, but quote the findings of the First Judicial Court of the State of Nevada in and for Carson City, in Goodman Oil vs. The State of Nevada, The Department of Taxation and the Nevada Tax Commission. Where the First Judicial Court found the State was placing an undue burden on the Indian Tribes by requiring them to pay the Nevada fuel tax and then file with the Department of Taxation for a refund of taxes they should not have been required to pay. However, the thrust of these regulations is away from compelling the Tribe or its members to pay the state tax on fuel and then being required to file for a refund of the tax. This is accomplished through regulations, which provide the Tribe the option of entering into an agreement with the Department, that will relieve the Tribe and/or its individual members from the necessity of filing for a refund of the State’s fuel tax. A copy of the written comments may be obtained by calling the Department of Motor Vehicles, Compliance Enforcement Division (775) 684-4711, or writing the Department, 555 Wright Way, Carson City, NV 89711.

2. The number persons who:

- (a) Attended each hearing: Reno, NV (7); Elko, NV (3) and Las Vegas (1)
- (b) Testified at each hearing: Reno, NV (6); Elko, NV (2) and Las Vegas, NV (1)
- (c) Submitted to the agency written comments: Comments were submitted by:
 - 1. Reno-Sparks Indian Colony;

2. Walker River Paiute Tribe;
3. Pyramid Lake Paiute Tribe;
4. The Battle Mountain Band of the Te-Moak Tribe of the Western Shoshone Indians of Nevada;
5. The Elko Band of the Te-Moak Tribe of the Western Shoshone Indians of Nevada;
6. Mr. Mark French of Mark French Tax Service; and
7. The Nevada Taxpayers association.

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

Comments were solicited from affected businesses through the public notices, as outlined in #1, and by direct mail to all of the Indian Tribes, Bands or Colonies located in the State of Nevada; Mr. Peter Kruger, Nevada Petroleum Marketer's Association; Mr. Daryl Cappuro, Nevada Motor Transport Association and the Nevada Tax Payers Association. The comments focused on opposition to the inclusion of a provision permitting the Tribe to choose not to enter an agreement and permitting the current method of refunding exempt use by the Tribe or Tribal members to remain as an alternative method of obtaining a refund of taxes paid for fuel purchased by a tribal member on a reservation or on land under Tribal jurisdiction. A copy of the written comments may be obtained by calling the Department of Motor Vehicles, Compliance Enforcement Division (775) 684-4711, or writing the Department, 555 Wright Way, Carson City, NV 89711.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

There were changes in the proposed regulation. The Department upon further review of the proposed regulation found, that Section 27 was not acceptable in that there was a substantial variance from a similar section already adopted in NAC 366. To be consistent, the department changed Section 27 of this proposed regulation to conform to the current regulatory language in NAC 366.

5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

There is no economic effect on businesses or the public created by these regulations.

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

There is no additional cost to the agency for enforcement of this regulation.

- 7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

Parts of this regulation duplicate the Department of Motor Vehicle's regulations in NAC 366. NAC 366 does not affect NRS or NAC 365, therefore the department wanted to incorporate the similar language into NAC 365 to be consistent between regulations that regulate different forms of fuel.

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

This regulation does not include provisions that are more stringent than a federal regulation that regulates the same activity.

- 9. 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.**

This regulation does not provide or involve a new fee, and hence since no fee is involved, there is not a total amount expected to be collected or used.