

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R086-02

Effective September 20, 2002

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

AUTHORITY: §1, NRS 360.090 and 370.510; §§2-10, NRS 360.090 and 370A.130.

Section 1. Chapter 370 of NAC is hereby amended by adding thereto a new section to read as follows:

The department will not approve an application for a license pursuant to this chapter if the applicant is not in compliance with the provisions of chapter 370A of NRS.

Sec. 2. Chapter 370A of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 9, inclusive, of this regulation.

Sec. 3. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 4. *“Brand family” means:*

1. A brand family identified on the list maintained pursuant to section 6 of this regulation; or

2. A group of cigarettes with the same name, including the same manufacturer, brand name and trade-mark, the only differentiating feature being additional descriptive information, including, without limitation, “menthol,” “lights,” “kings” or “100’s.”

Sec. 5. *“Wholesale dealer” means a wholesale dealer as defined in:*

1. NRS 370.055, who:

(a) Is licensed pursuant to chapter 370 of NRS; and

(b) Has affixed a revenue stamp to a pack of cigarettes; and

2. NRS 370.440, who is licensed pursuant to chapter 370 of NRS.

Sec. 6. 1. The department, in consultation with the attorney general, will maintain a list of participating manufacturers and, for each participating manufacturer, a list of the brand families produced by that participating manufacturer.

2. The department will make the list maintained pursuant to this section available on the Internet website of the department and at the office of the department.

Sec. 7. 1. Each wholesale dealer shall submit to the department each month a report indicating the number of cigarettes manufactured by a manufacturer of tobacco products who is not a participating manufacturer that were sold by the wholesale dealer during the previous month. The number of cigarettes sold during the previous month must be measured by the excise taxes collected by this state on packs of cigarettes and containers of “roll-your-own” tobacco in the manner set forth in NRS 370A.120 for determining the number of units sold. For each cigarette sold during the previous month, the report must indicate:

(a) The month the cigarette was sold;

(b) The brand family of the cigarette;

(c) The name and address of the manufacturer of tobacco products who manufactured the cigarette, if known;

(d) If the name and address of the manufacturer of tobacco products who manufactured the cigarette is not known, the name and address of the exclusive distributor or importer of the cigarette, if known; and

(e) The name and address of the person from whom the wholesale dealer purchased the cigarette, if that person was not listed pursuant to paragraph (c) or (d).

2. The report required pursuant to this section must also contain:

(a) The number of cigarettes contained in all packs of cigarettes upon which the wholesale dealer affixed a revenue stamp during the previous month;

(b) The weight, in ounces, of “roll-your-own” tobacco upon which the excise taxes are due from the wholesale dealer;

(c) The number of revenue stamps the wholesale dealer has purchased but has not yet affixed to a pack of cigarettes; and

(d) If the wholesale dealer is a manufacturer of tobacco products, a statement that the wholesale dealer:

(1) Is in compliance with the requirements set forth in NRS 370A.140 and subsection 1 of NRS 370A.160; and

(2) Has, since May 24, 1999, for all times when NRS 370A.140 and subsection 1 of NRS 370A.160 applied to the wholesale dealer:

(I) Been in compliance with NRS 370A.140 and subsection 1 of NRS 370A.160; or

(II) Pursuant to subsection 2 of NRS 370A.160, been brought into compliance with NRS 370A.140 and subsection 1 of NRS 370A.160.

3. If the wholesale dealer affixed a revenue stamp to the pack containing a cigarette, that cigarette must be included in the report required pursuant to this section whether, at the time the revenue stamp was affixed, that cigarette was owned by:

(a) The wholesale dealer; or

(b) A person other than the wholesale dealer.

4. The report required pursuant to this section must be submitted:

(a) On a form prescribed by the department; or

(b) Electronically, in a format prescribed by the department.

5. Except as otherwise provided in subsection 6, the report required pursuant to this section must be submitted:

(a) On the same date as a report submitted by the wholesale dealer pursuant to NRS 370.240 or 370.465, if the wholesale dealer submits a report pursuant to NRS 370.240 or 370.465; or

(b) Not later than the last date on which a report could be submitted pursuant to NRS 370.240 or 370.465, if the wholesale dealer does not submit a report pursuant to NRS 370.240 or 370.465.

6. If the number of cigarettes to be reported pursuant to subsection 1 for a month is less than 10,000, the wholesale dealer may make written application to the department to submit the report for that month on a date later than the date specified in subsection 5. The department may approve a written application pursuant to this subsection if the date requested by the wholesale dealer in the application for submitting the report is not later than 12 months after the date specified in subsection 5 for submitting the report.

7. Each wholesale dealer shall maintain a copy of each report submitted pursuant to this section for not less than 4 years after the date the report was submitted.

Sec. 8. 1. *If a wholesale dealer is owned in whole or in part by a manufacturer of tobacco products who is not in compliance with NRS 370A.140 and subsection 1 of NRS 370A.160, the wholesale dealer may not submit a report required pursuant to section 7 of this regulation until:*

(a) The manufacturer of tobacco products is in compliance with NRS 370A.140 and subsection 1 of NRS 370A.160; or

(b) The wholesale dealer is not owned in whole or in part by the manufacturer of tobacco products.

2. If a wholesale dealer submits a report in violation of subsection 1, the report will not be considered submitted for the purposes of section 9 of this regulation.

Sec. 9. *If a wholesale dealer fails to submit a report as required by section 7 of this regulation or submits incorrect information on a report submitted pursuant to section 7 of this regulation, the department may:*

1. Suspend the license of the wholesale dealer until:

(a) The wholesale dealer submits the report or resubmits the report with corrected information, as appropriate; and

(b) The department determines that the information in the report is correct; and

2. Impose a penalty on the wholesale dealer consisting of:

(a) For the first violation within 7 years, a fine of \$1,000;

(b) For a second or subsequent violation within 7 years, a fine of \$5,000; or

(c) For a third or subsequent violation within 7 years, revocation of the license of the wholesale dealer.

Sec. 10. 1. Except as otherwise provided in this section, each wholesale dealer licensed on the effective date of this regulation shall, not later than 60 days after the effective date of this regulation, submit to the department of taxation a report pursuant to section 7 of this regulation for each month beginning May 1999, and ending the month of the effective date of this

regulation, provided that no information relating to the period on or before May 24, 1999, be included in any report.

2. Except as otherwise provided in subsections 3 and 4, if a wholesale dealer fails to submit a report as required by this section or submits incorrect information on a report submitted pursuant to this section, the department of taxation may suspend the license of the wholesale dealer and impose a penalty as set forth in section 9 of this regulation.

3. If a wholesale dealer is unable to complete the reports required pursuant to this section because the wholesale dealer does not have the information necessary to complete the reports, the wholesale dealer shall submit to the department of taxation:

(a) The reports with as much required information as the wholesale dealer is able to provide; and

(b) A written application for a waiver or partial waiver of the requirements of this section.

4. The department of taxation will waive or partially waive the requirements of this section after receipt of a written application pursuant to subsection 3 if:

(a) The wholesale dealer has complied with all provisions of chapters 370 and 370A of NRS and chapters 370 and 370A of NAC; and

(b) The department of taxation finds good cause for the waiver or partial waiver.

5. For the purposes of this section, “wholesale dealer” has the meaning ascribed to it in section 5 of this regulation.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R086-02

The Nevada Tax Commission adopted regulations assigned LCB File No. R086-02 which pertain to chapters 370 and 370A of the Nevada Administrative Code on August 5, 2002.

Notice date: 7/5/2002
Hearing date: 8/5/2002

Date of adoption by agency: 8/5/2002
Filing date: 9/20/2002

INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 370 and 370A.

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on August 5, 2002 at the Washoe County Health Department, South Conference Room, 1001 East 9' Street, Reno, Nevada. It appears that due to the primarily procedural nature of the proposed regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (702) 687-4.896, or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on June 14, 2002. Thus, the proposed regulation, for

practical purposes, was discussed at two workshops and has been heard and considered at one public hearing of the Nevada Tax Commission.

2. The number of persons who:

(a) Attended the hearing: 37

(b) Testified at the hearing: 3

(c) Submitted to the Tax Commission written comments: Written comments were submitted to and received by the Department of Taxation from R. J. Reynolds Tobacco Company and the Attorney General's Office, which were forwarded to the Tax Commission.

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 and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 240 interested businesses and persons on the Department of Taxation's mailing list.

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.

Section 7, paragraph 1; Section 7, paragraph 2 (a), (b), and (c); and Section 7, paragraph 3 of the proposed regulation was slightly modified prior to adoption, due to issues raised by the Department of Taxation and by affected or interested businesses and persons. The remaining sections of the proposed regulation were not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation or Tax Commission members, and the Tax Commission believed no changes other than those made were necessary.

5. The estimated economic effect of the adopted regulation on the business 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.

(a) Adverse and beneficial effects.

The proposed regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public. The State of Nevada is required to diligently enforce the Model Statute (NRS 370A) to assure that Nevada does not experience a reduction in payments from tobacco companies under the Master Settlement Agreement.

(b) Immediate and long-term effects.

Same as #5(a) above.

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

The proposed regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some minor administrative costs for the Department, which are not quantifiable at this time.

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

The proposed regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

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

There are no known federal regulations pertaining to state tobacco tax procedures, which are the subject of the proposed regulation.

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.

The proposed regulation does not provide a new fee or increase an existing fee.