



STATE OF NEVADA  
DEPARTMENT OF TAXATION

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Posted 5/24/24

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of

**LCB File No. R100-22**

**Nevada Tax Commission**

The Nevada Tax Commission will hold a Public Hearing at **9:00 a.m.** on **Tuesday, June 25, 2024**. The purpose of the hearing is to receive comments from all interested parties regarding the adoption of the regulation that pertains to LCB File No. R100-22.

You may attend this meeting at either of the following physical locations:

Nevada Department of Taxation  
700 E. Warm Springs Road, 1st Floor  
Las Vegas, Nevada 89119

Nevada Department of Taxation  
4600 Kietzke Lane, Suite L235  
Reno, Nevada 89502

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The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Need and purpose of the proposed regulations or amendments

Proposed permanent regulation R100-22 revises provisions governing certain credits which a wholesale dealer of tobacco products, other than cigarettes, may claim against the tax imposed on such tobacco products; eliminates the requirement that a wholesale dealer of tobacco products, other than cigarettes, include on invoices certain information regarding the tax required to be paid on such tobacco products; and provides other matters properly relating thereto.

Existing law imposes a tax upon the receipt, purchase, or sale in this State of tobacco products,

other than cigarettes, at a rate of 30 percent of the wholesale price of such other tobacco products. (NRS 370.0318, 370.450) Before Senate Bill No. 81 of the 80th Session of the Nevada Legislature (SB81) became effective on January 1, 2020, a wholesale dealer of other tobacco products was required to pay the tax to the Department of Taxation not later than 20 days after the end of the month in which the wholesale dealer sold or distributed the other tobacco products. (Sections 73.3, 73.7 and 84 of Senate Bill No. 81, chapter 118, Statutes of Nevada 2019, at pages 636-37, 643) SB81 revised the manner in which a wholesale dealer pays the tax on other tobacco products by requiring that the tax be paid to the Department not later than 20 days after the end of the month in which: (1) such tobacco products are first possessed or received by a wholesale dealer who maintains a place of business in this State for sale or disposition in this State; (2) such tobacco products are sold by a wholesale dealer who does not maintain a place of business in this State to a retail dealer or ultimate consumer in this State; or (3) for other tobacco products manufactured, produced, fabricated, assembled, processed, labeled or finished in this State, such tobacco products are sold in this State to a wholesale dealer of other tobacco products, a retail dealer or an ultimate consumer. (NRS 370.450, 370.465)

Existing law authorizes a wholesale dealer of other tobacco products to claim a tax credit in an amount equal to the tax paid to the Department by the wholesale dealer for other tobacco products which: (1) may no longer be sold; or (2) are shipped outside this State for retail sale and consumption outside this State. (NRS 370.490) Existing regulations provide that the Department will allow this tax credit only to the wholesale dealer who originally reported and paid the tax to the Department. If another wholesale dealer who would otherwise be entitled to claim the credit furnishes certain substantiating evidence to the wholesale dealer who originally reported and paid the tax, the wholesale dealer who did not originally report and pay the tax is authorized to obtain payment of an amount equal to the credit from the wholesale dealer who originally reported and paid the tax. (NAC 370.165) Section 1 of this regulation removes the specific regulatory authority for a wholesale dealer who did not originally report and pay the tax to obtain payment of an amount equal to the credit from the wholesale dealer who originally reported and paid the tax.

Existing law requires: (1) a wholesale dealer of other tobacco products to obtain an itemized invoice from each manufacturer or other wholesale dealer from whom other tobacco products are purchased or otherwise acquired; and (2) a retail dealer of other tobacco products to obtain from each wholesale dealer of other tobacco products a separate, itemized invoice of each purchase of other tobacco products from the wholesale dealer. (NRS 370.470) Section 2 of this regulation eliminates the requirement of existing regulations that a wholesale dealer of other tobacco products include in such invoices as part of the total price of such products the amount of the tax required to be paid by the wholesale dealer. (NAC 370.150)

## 2. How to obtain the approved or revised text of regulations prepared by LCB

You may obtain a copy of the proposed permanent regulation by writing to the Nevada Department of Taxation, 3850 Arrowhead Drive, 2<sup>nd</sup> Floor, Carson City, Nevada 89706; or by calling the office at (775) 684-2059. The proposed permanent regulation is also available for review and download on the Department of Taxation website at <https://tax.nv.gov/> or on the Nevada Legislature website at <https://www.leg.state.nv.us/>.

### 3. Methods used in determining the impact on a small business

The agency used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulation changes. The Department prepared a small business impact questionnaire that was forwarded to the Interested Parties List which is maintained by the Department. No comment was returned by members of the public.

The Department will continue to accept input on the impact of the proposed permanent regulation on small businesses through the regulatory process. No respondents indicated that this regulation would have a direct and significant economic burden upon a small business.

The Department held a workshop for concerned members of the public to state their concerns and submit correspondence regarding the regulation. No members of the public expressed concern about impacts to small businesses.

### 4. Estimated economic effect of regulation on businesses and the public

#### a. Adverse and beneficial effects

The proposed permanent regulation does not present any reasonable, foreseeable or anticipated adverse economic effects on small businesses or the public.

#### b. Immediate and long-term effects

The proposed permanent regulation does not present any reasonable, foreseeable or anticipated immediate or long-term economic effects on small businesses or the public.

### 5. Cost for enforcement of the regulations

The proposed permanent regulation does not present any significant, foreseeable or anticipated cost or decrease in costs for enforcement.

### 6. Overlap or duplication of other state or local governmental agencies

The proposed permanent regulation does not overlap or duplicate any regulation of other state or local governmental entities.

### 7. Regulation required by federal law

Not Applicable

### 8. More stringent than federal regulations

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

### 9. New or increases in existing fees

The proposed permanent regulation does not include new fees or increase an existing fee.

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Persons wishing to comment on the proposed action of the Nevada Tax Commission may appear at

the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Tax Commission, 3850 Arrowhead Drive, 2<sup>nd</sup> Floor, Carson City, Nevada 89706. Written submissions must be received at least two weeks prior to the above scheduled public hearing.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.

**A copy of the Notice and the proposed permanent regulation to be adopted and/or amended is on file and has been posted at the following location:** The Department of Taxation - 3850 Arrowhead Drive, 2<sup>nd</sup> Floor, Carson City, Nevada 89706.

Members of the public may inspect these documents during regular business hours at the above location. Additional copies of the notice and proposed permanent regulation to be adopted and/or amended are available at the below locations.

The text of the proposed permanent regulation will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

**Notice has been EMAILED/MAILED for posting at the following locations:** Department of Taxation - 4600 Kietzke Lane, Building L, Ste 235, Reno, Nevada; Department of Taxation - 700 E. Warm Springs Rd, Ste 200, Las Vegas, Nevada; The Legislative Building - Capitol Complex, Carson City, Nevada; The Nevada State Library -100 Stewart Street, Carson City, Nevada; Interested Parties Group; and the Mailing List maintained by the Department. Notice of this meeting was posted on the Department of Taxation website at <https://tax.nv.gov/>, on the Legislative website at <https://www.leg.state.nv.us/>, and the Nevada Public Notice Website at <https://notice.nv.gov/>.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations to participate in this hearing should notify Tina Padovano at 775-684-2096 or [tpadovano@tax.state.nv.us](mailto:tpadovano@tax.state.nv.us) at least 3 days before the hearing. In order to comply with the security procedures of the Department, you will be required to show identification and sign a visitor's log prior to entering the meeting room.

If you need an accommodation in order to communicate during the hearing, the Department will provide one at no cost to you. Arrangements for an interpreter should be made as soon as possible, but no later than 14 days before the scheduled meeting. Please contact Tina Padovano at 775-684-2096 at least 14 days in advance to request an interpreter in your preferred language. You may also submit your request to [tpadovano@tax.state.nv.us](mailto:tpadovano@tax.state.nv.us).

Si necesita una ayuda para comunicarse durante la audiencia, el Departamento se lo proporcionará sin costo alguno. Los trámites para conseguir un intérprete deben hacerse lo antes posible, pero a más tardar 14 días antes de la cita programada. Por favor, póngase en contacto con Tina Padovano al 775-684-2096 con al menos 14 días de anticipación para solicitar un intérprete en su idioma de preferencia. También puede solicitarlo a través de [tpadovano@tax.state.nv.us](mailto:tpadovano@tax.state.nv.us).

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R100-22**

May 20, 2024

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

AUTHORITY: §§ 1-3, NRS 360.090 and 370.510.

A REGULATION relating to taxation; revising provisions governing the payment of the tax imposed on tobacco products, other than cigarettes; revising provisions governing certain credits and refunds which a wholesale dealer of such tobacco products may claim; eliminating the requirement that a wholesale dealer of such tobacco products include the tax as part of the price of the products; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law imposes a tax upon the receipt, purchase or sale in this State of tobacco products, other than cigarettes. (NRS 370.0318, 370.450) Before Senate Bill No. 81 (S.B. 81) of the 80th Session of the Nevada Legislature became effective on January 1, 2020, a wholesale dealer of such tobacco products was required to pay the tax to the Department of Taxation not later than 20 days after the end of the month in which the wholesale dealer sold or distributed the other tobacco products. (Sections 73.3, 73.7 and 84 of Senate Bill No. 81, chapter 118, Statutes of Nevada 2019, at pages 636-37, 643) S.B. 81 revised the manner in which a wholesale dealer who maintains a place of business in this State is required to pay the tax by requiring that such a wholesale dealer pay the tax to the Department not later than 20 days after the end of the month in which the wholesale dealer first receives or possesses other tobacco products for sale or disposition in this State. (NRS 370.450, 370.465) Under existing law, the wholesale dealer is authorized to claim a credit or refund of any such taxes paid if the wholesale dealer: (1) may no longer sell the other tobacco products for which the taxes were paid; (2) distributes the other tobacco products outside this State for retail sale and consumption outside this State; or (3) distributes the other tobacco products to certain exempt entities, including, without limitation, to the United States Government for distribution to the Army, Air Force, Navy or Marine Corps or to an Indian reservation or colony where an equal or greater excise tax has been imposed on the tobacco products. (NRS 370.490, 370.503)

Because existing law requires a wholesale dealer of other tobacco products who maintains a place of business in this State to pay the tax on such tobacco products not later than 20 days after the end of the month in which the wholesale dealer first receives or possesses the other tobacco products for sale or disposition in this State, **section 1** of this regulation makes a

conforming change to remove a reference to the payment of such tax not later than 20 days after the end of the month for sales made during the preceding month.

**Section 2** of this regulation removes a procedure by which: (1) a wholesale dealer who did not originally report and pay tax on other tobacco products may obtain payment of an amount equal to an authorized credit from the wholesale dealer who originally reported and paid the tax; and (2) the wholesale dealer who originally reported and paid the tax may file an amended tax return with the Department to obtain a credit for such a payment. (NAC 370.165) **Section 2** also provides that the Department will allow the credit authorized by existing law for other tobacco products that may no longer be sold only to a wholesale dealer who originally reported and paid the tax and who has not made a sale of the other tobacco products. (NRS 370.490) Finally, **section 2** provides that the Department will allow a credit or refund for other tobacco products which are shipped outside this State for retail sale and consumption outside this State, or which are sold to certain exempt entities, only if the sale is the first sale of the other tobacco products by the wholesale dealer who originally reported and paid the tax. (NRS 370.490, 370.503)

Existing law requires a retail dealer of other tobacco products to obtain from each wholesale dealer of other tobacco products a separate, itemized invoice for each purchase made of other tobacco products from the wholesale dealer. (NRS 370.470) **Section 3** of this regulation repeals a requirement that the wholesale dealer include the tax required to be paid by the wholesale dealer as part of the total price of such products rather than as a separate item on the invoice. (NAC 370.150)

**Section 1.** NAC 370.160 is hereby amended to read as follows:

370.160 ~~1. The tax imposed by NRS 370.450 must be paid to the Department on or before the 20th day of each month for sales made during the preceding month.~~

~~2.~~ Each wholesale dealer shall submit with ~~his or her~~ *each* payment *of tax submitted pursuant to NRS 370.465* a return on a form provided by the Department. If, *pursuant to NRS 370.450, no tax is imposed on* a wholesale dealer ~~does not make a taxable sale~~ during the preceding month, ~~he or she~~ *the wholesale dealer* shall file a return with the Department indicating this fact.

**Sec. 2.** NAC 370.165 is hereby amended to read as follows:

370.165 1. The Department will allow *a wholesale dealer* a credit authorized by NRS 370.490 *or a refund authorized by NRS 370.503* only if the wholesale dealer who files the claim for the credit *or refund* is the wholesale dealer who originally reported and paid the tax to the Department.

2. ~~{A wholesale dealer who did not originally report and pay the tax to the Department may request from the wholesale dealer who originally reported and paid the tax to the Department payment of an amount equal to the credit authorized by NRS 370.490. Such a request must include a credit memo of the manufacturer for proof of returned merchandise or a duplicate or copy of the invoice as proof of the sale outside the State.}~~ *If, pursuant to subsection 1 of NRS 370.490, a wholesale dealer claims a credit for other tobacco products that may no longer be sold, the Department will allow the credit only if the wholesale dealer has not made a sale of the other tobacco products for which the credit is claimed.*

3. ~~{A wholesale dealer who is allowed a credit authorized by NRS 370.490 and who, pursuant to subsection 2, makes a payment to a wholesale dealer who did not originally report and pay the tax to the Department may complete and file with the Department an amended return.}~~ *If the basis for a claim by a wholesale dealer for a credit authorized by NRS 370.490 or a refund authorized by NRS 370.503 is a sale of other tobacco products for which a credit is authorized by subsection 2 of NRS 370.490 or a refund is authorized by NRS 370.503, the Department will allow the credit or refund, as applicable, only if the sale is the first sale of the other tobacco products by the wholesale dealer who originally reported and paid the tax to the Department. The Department will not allow such a credit or refund for any subsequent sale of the other tobacco products.*

**Sec. 3.** NAC 370.150 is hereby repealed.

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**TEXT OF REPEALED SECTION**

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**370.150 Indicating tax on invoice; tax not to be charged to retail dealer as separate item. (NRS 370.510)** A wholesale dealer in products made from tobacco, other than cigarettes, shall indicate on his or her invoices of sale the amount of the tax he or she is required to pay pursuant to NRS 370.450 as a part of the total price of those products. This amount must not be charged to the retail dealer as a separate item.