

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION
LCB File No. R100-22**

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.

TEXT OF REPEALED SECTION

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.