

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

**LCB File No. R106-01**

Effective December 17, 2001

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

AUTHORITY: §§ 1-6, NRS 366.110.

**Section 1.** Chapter 366 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

**Sec. 2.** *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 special 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 special 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 special fuel for which a tax is imposed pursuant to chapter 366 of NRS, other than a sale of special fuel to a governing body or tribal member for exclusive use by the governing body or tribal member.*

**Sec. 3. 1.** *If the governing body of a tribe does not enter into an agreement pursuant to section 2 of this regulation, each special fuel supplier who sells special fuel on the reservation of the tribe shall collect the tax imposed on that sale pursuant to chapter 366 of NRS.*

*2. If a tribe specified in subsection 1 pays the tax on the sale of special fuel pursuant to chapter 366 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 2 of this regulation.*

**Sec. 4.** *If a special fuel supplier fails to submit a tax return pursuant to NRS 366.383, the special fuel supplier is not entitled to retain any fee for collecting the tax pursuant to NRS 366.390 if:*

*1. The tax return was mailed after the last day of the month in which the return was required to be submitted to the department; or*

*2. The tax for which the tax return was prepared was not included in the tax return or was filed after the last day of the month specified in subsection 1.*

**Sec. 5.** NAC 366.005 is hereby amended to read as follows:

366.005 As used in this chapter, unless the context otherwise requires:

1. “Department” means the department of motor vehicles . ~~[and public safety.]~~
2. *“Governing body” means the governmental entity that has the authority to make decisions on behalf of a tribe.*
3. “Habitually delinquent” means the commission by a special fuel user, special fuel supplier or special fuel dealer of any of the following violations at least twice within 1 year or any two of the following violations at least once within 1 year:
  - (a) The failure to file a monthly tax return during the period prescribed in NRS 366.380, 366.383 or 366.386, unless the department finds that:
    - (1) The failure was caused by circumstances beyond the control of the special fuel user, special fuel supplier or special fuel dealer and occurred notwithstanding the exercise of ordinary care; and
    - (2) The special fuel user, special fuel supplier or special fuel dealer has paid all penalties and interest imposed by the department because of his failure to file the tax return during the prescribed period.
  - (b) The failure to submit to the department payment of the tax on special fuel collected pursuant to NRS 366.540 during the period prescribed in that section.
  - (c) The failure to submit to the department the payment of any additional or estimated assessments imposed by the department pursuant to NRS 366.405 during the period prescribed in that section.
- ~~[3.]~~ 4. *“Reservation” means any land that:*
  - (a) *Is located within the boundaries of this state; and*
  - (b) *Is set aside for use by a tribe, including, without limitation:*

- (1) An Indian reservation;*
  - (2) An Indian colony;*
  - (3) Any land which is owned in fee by or held in trust for a tribe; and*
  - (4) Any other land which is under the jurisdiction of a tribe.*
5. *“Special fuel” has the meaning ascribed to it in NRS 366.060.*
  6. *“Special fuel dealer” has the meaning ascribed to it in NRS 366.062.*
  - ~~[4.]~~ 7. *“Special fuel supplier” has the meaning ascribed to it in NRS 366.070.*
  - ~~[5.]~~ 8. *“Special fuel user” has the meaning ascribed to it in NRS 366.080.*
  9. *“Tribal member” includes an enrolled member of a tribe.*
  10. *“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. 6.** NAC 366.220 is hereby amended to read as follows:

366.220 1. Except as otherwise provided in ~~[subsection 2.]~~ *this section*, if a motor vehicle with auxiliary equipment consumes special fuel and there is no auxiliary motor or separate fuel tank for the auxiliary motor, the operator of the vehicle must, ~~[for the purposes of obtaining]~~ *to obtain* a refund pursuant to subsection 5 of NRS 366.207, provide to the department documentation adequate to establish to the satisfaction of the department the amount of special fuel which was used to operate the auxiliary equipment.

2. A special fuel user may obtain a refund pursuant to subsection 5 of NRS 366.207 without providing the documentation required by subsection 1 if the motor vehicle with auxiliary equipment ~~[is a truck which mixes concrete, a garbage truck with a trash compactor or a vehicle~~

~~with a pump, conveyor or other device for loading or unloading the vehicle. The operator of such a vehicle may obtain a refund of:~~

~~—(a) Twenty percent of the tax paid on the special fuel consumed if the auxiliary equipment is a concrete mixer or trash compactor;~~

~~—(b) The tax paid on three fourths of a gallon of special fuel for every 1,000 gallons of liquid loaded or unloaded if the auxiliary equipment is a pump; or~~

~~—(c) The tax paid on three fourths of a gallon of special fuel for every 6,000 pounds of commodities loaded or unloaded if the auxiliary equipment is a conveyor or other device for the loading or unloading of materials other than liquids.~~

*—3.] has a common fuel reservoir that is used to propel the motor vehicle on the highway or to operate the auxiliary equipment. If a special fuel user operates such a motor vehicle and the motor vehicle is not specified in subsection 3, or if the special fuel user operates a vehicle specified in that subsection and claims a refund in a percentage that is greater than the percentage set forth in that subsection for the motor vehicle, the special fuel user must establish to the satisfaction of the department that he is entitled to the refund in accordance with subsection 1.*

*3. The operator of a motor vehicle with auxiliary equipment set forth in this subsection may obtain a refund of the tax paid on the refundable fuel that is used by the motor vehicle on the public highways of this state in the following amounts:*

*(a) Boom truck with a block boom.....10 percent*

*(b) Car carrier with a hydraulic winch.....10 percent*

*(c) Dump truck.....23 percent*

*(d) Garbage truck with a compactor.....20 percent*

- (e) *Line truck with a digger or derrick.....20 percent*
- (f) *Mobile crane.....42 percent*
- (g) *Refrigeration truck.....15 percent*
- (h) *Sanitation truck.....15 percent*
- (i) *Semi-wrecker truck.....35 percent*
- (j) *Service truck with a jack hammer or pneumatic drill.....15 percent*
- (k) *Snow plow.....10 percent*
- (l) *Sweeper truck.....20 percent*
- (m) *Tank truck other than a truck with a milk or pneumatic tank.....24 percent*
- (n) *Truck for distributing hot asphalt.....10 percent*
- (o) *Truck with a cement mixer.....30 percent*
- (p) *Truck with a dump trailer.....15 percent*
- (q) *Truck with a milk tank.....30 percent*
- (r) *Truck with a pneumatic tank.....15 percent*
- (s) *Truck with a pump for cleaning a sewer or cesspool.....90 percent*
- (t) *Truck with an aerial lift.....20 percent*
- (u) *Truck with equipment to move a dumpster or cargo container.....23 percent*

*4. To obtain a refund pursuant to subsection 3, the operator of the motor vehicle must establish to the satisfaction of the department that:*

*(a) The tax has been paid on the special fuel for which the operator wishes to obtain a refund; and*

*(b) The special fuel was used in this state to operate auxiliary equipment that is mounted on the motor vehicle.*

5. Except as otherwise provided in NAC 366.230, a vehicle with an air-conditioning unit is not entitled to a refund pursuant to this section.

~~[4.]~~ 6. Notwithstanding any provision of this section to the contrary, the amount of a refund allowed for a special fuel user or an operator pursuant to this section may not exceed the total amount of taxes paid by the special fuel user or operator for special fuel. ~~[For the purposes of this section, “special fuel” does]~~

7. *As used in this section, “refundable fuel”:*

*(a) Means the total amount of special fuel purchased by a person during the period specified in subsection 5 of NRS 366.207 for which taxes have been paid pursuant to chapter 366 of NRS, less any amount of that special fuel:*

*(1) That is claimed by the person for another exempt use;*

*(2) For which any taxes are remitted to another jurisdiction on behalf of the person;*

*and*

*(3) That is used during that period for any other taxable use.*

*(b) Does* not include special fuel for which a special fuel user or an operator has previously received a refund for credit.

## NOTICE OF ADOPTION OF REGULATION

The Department of Motor Vehicles and Public Safety adopted regulations assigned LCB File No. R106-01, which pertain to chapter 366 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 R106-01 INFORMATIONAL STATEMENT

#### Regulations under NAC 366 Subject: Collection of taxes on Special Fuel

#### 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  
3505 CONSTRUCTION WAY  
WINNEMUCCA NV 89445



NEVADA DMV & PS  
215 WEST BRIDGE STREET  
YERINGTON NV 89447

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

NEVADA DMV & PS  
1694 COUNTY ROAD  
MINDEN NV 89423

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 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 be have to be refunded through 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 purpose and intent of these regulations is to avoid compelling the Tribe or its members to pay the tax and then having to file for the refund by allowing the tribe the choice of entering into and agreement with the Department or not entering into an agreement. The Department is providing the Tribe a choice and is not compelling the tribe to either enter into an agreement or not. Calling the Department of Motor Vehicles , Compliance Enforcement Division (775) 684-4711, or writing the Department, 555 Wright Way, Carson City, NV 89711, may obtain a copy of the written comments.

#### 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 provisions 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 three changes in this regulation they were:

- (a) the substituting the word "or" for the word "and" in Sec. 2(b)(2); and
- (b) addition of the word "land" in Sec. 4(b)4; and
- (c) Changing the word "Special" to "Refundable" in Sec. 7(b).

The Department believes the regulation is as flexible and accommodating as possible, given the strictures of AB584 and NRS 366 and that no additional changes to the proposed regulation is warranted..

- 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 365. NAC 365 does not affect NRS 366 or NAC 366, therefore the department wanted to incorporate the similar language into NAC 366 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.