

ASSEMBLY BILL NO. 2—COMMITTEE OF THE WHOLE

JUNE 27, 2008

Referred to Committee of the Whole

SUMMARY—Clarifies the applicability of sales taxes to certain meals provided by business entities to their employees, independent contractors, patrons or guests. (BDR 32-18)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to taxation; clarifying the applicability of sales taxes to certain meals provided by business entities to their employees, independent contractors, patrons or guests; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes sales and use taxes on the sale, storage, use or other consumption in this State of tangible personal property. (Chapters 372 and 374 of NRS) Existing law exempts food for human consumption, such as groceries sold in a retail store, from the sales and use taxes. However, existing law does not exempt prepared food intended for immediate consumption, such as meals served in restaurants, from the sales and use taxes. (Nev. Const. Art. 10, § 3[A]; NRS 372.284, 374.289)

The Nevada Supreme Court has determined that under the food exemption, a business entity is exempt from paying use taxes on prepared food intended for immediate consumption that the business entity provides to its patrons and employees free of charge in the form of complimentary meals. However, the Court has also determined that such complimentary meals provided by a business entity may be subject to sales taxes when consideration is properly demonstrated. (*Sparks Nugget, Inc. v. State ex rel. Department of Taxation*, 124 Nev. Adv. Op. 15, 179 P.3d 570 (2008))

This bill clarifies that under existing law, when a business entity provides complimentary meals on a regular basis to its employees, independent contractors, patrons or guests, the business entity receives a valuable benefit, including, but not limited to, goodwill and convenience, in exchange for the provision of those complimentary meals, and that valuable benefit constitutes legal consideration for the provision of those complimentary meals to its employees, independent contractors, patrons or guests. Because a business entity receives legal



* A B 2 *

23 consideration when it provides such complimentary meals to its employees,
24 independent contractors, patrons or guests, this bill clarifies that under existing law,
25 the provision of those complimentary meals results in sales that are subject to sales
26 taxes.

27 Finally, because this bill is intended to clarify existing law and remove any
28 doubt regarding the intended meaning and application of that existing law, this bill
29 applies both prospectively and retrospectively to the taxation of complimentary
30 meals provided by a business entity before, on or after the effective date of this bill,
31 unless the collection of taxes with regard to those complimentary meals is
32 otherwise prohibited by law, such as by an applicable statute of limitations. This
33 bill also applies to any proceedings regarding the taxation of complimentary meals
34 that are: (1) pending before the Department of Taxation or the Nevada Tax
35 Commission on or after the effective date of this bill; (2) pending in a district court
36 or the Nevada Supreme Court on or after the effective date of this bill; or (3) filed
37 with the Department of Taxation or the Nevada Tax Commission on or after the
38 effective date of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** The Legislature finds and declares that:
- 2 1. The provisions of chapters 372 and 374 of NRS impose sales
3 taxes on the retail sale in this State of tangible personal property and
4 impose use taxes on the storage, use or other consumption in this
5 State of tangible personal property.
- 6 2. Section 3[A] of Article 10 of the Nevada Constitution and
7 NRS 372.284 and 374.289 specifically exempt “food for human
8 consumption” from the sales and use taxes imposed by chapters 372
9 and 374 of NRS. However, by their express terms, the constitutional
10 and statutory food exemptions do not apply to “prepared food
11 intended for immediate consumption.”
- 12 3. In *Sparks Nugget, Inc. v. State ex rel. Department of*
13 *Taxation*, 124 Nev. Adv. Op. 15, 179 P.3d 570 (2008), the Nevada
14 Supreme Court held that under the constitutional and statutory food
15 exemptions, a business entity is exempt from paying use taxes on
16 prepared food intended for immediate consumption that the business
17 entity provides to its patrons and employees free of charge in the
18 form of complimentary meals. In reaching its holding, the Court
19 explained that the primary issue in the case was the application of
20 use taxes, and not the application of sales taxes. Consequently, the
21 Court stated that “complimentary meals such as the ones at issue in
22 this case may be subject to sales tax where consideration is properly
23 demonstrated.”
- 24 4. Pursuant to NRS 372.060 and 374.065, a “sale” is defined as
25 any transfer of title or possession, exchange, barter, lease or rental,
26 conditional or otherwise, in any manner or by any means
27 whatsoever, of tangible personal property for a consideration. Under



* A B 2 *

1 this definition, a "sale" includes the furnishing or serving, for a
2 consideration, of prepared food intended for immediate
3 consumption.

4 5. This act clarifies that under the existing provisions of
5 chapters 372 and 374 of NRS, when a business entity provides, on a
6 regular basis, prepared food intended for immediate consumption to
7 its employees, independent contractors, patrons or guests in the form
8 of complimentary meals, the business entity receives a valuable
9 benefit, including, but not limited to, goodwill and convenience, in
10 exchange for the provision of those complimentary meals, and that
11 valuable benefit constitutes legal consideration for the provision of
12 those complimentary meals to its employees, independent
13 contractors, patrons or guests.

14 6. Because a business entity receives legal consideration when
15 it provides such complimentary meals to its employees, independent
16 contractors, patrons or guests, the provision of each such
17 complimentary meal by the business entity constitutes a sale within
18 the meaning of the provisions of chapters 372 and 374 of NRS.

19 **Sec. 2.** 1. This act is intended to clarify the existing
20 provisions of chapters 372 and 374 of NRS and remove any doubt
21 regarding the intended meaning and application of those provisions.

22 2. This act applies both prospectively and retrospectively to:

23 (a) The taxation of complimentary meals provided by a business
24 entity to its employees, independent contractors, patrons or guests
25 before, on or after the effective date of this act, unless the collection
26 of taxes with regard to those complimentary meals is otherwise
27 prohibited by law, including, but not limited to, by an applicable
28 statute of limitations; and

29 (b) The disposition of any proceedings regarding the taxation of
30 complimentary meals provided by a business entity to its
31 employees, independent contractors, patrons or guests that are:

32 (1) Pending before the Department of Taxation or the
33 Nevada Tax Commission on or after the effective date of this act;

34 (2) Pending in a district court or the Nevada Supreme Court
35 on or after the effective date of this act; or

36 (3) Filed with the Department of Taxation or the Nevada Tax
37 Commission on or after the effective date of this act.

38 **Sec. 3.** NRS 372.727 is hereby amended to read as follows:

39 372.727 ~~{ }~~

40 **1. The Legislature finds and declares that:**

41 (a) *When a business entity provides complimentary meals on a*
42 *regular basis to its employees, independent contractors, patrons or*
43 *guests, the business entity receives a valuable benefit, including,*
44 *but not limited to, goodwill and convenience, in exchange for the*
45 *provision of those complimentary meals, and that valuable benefit*



* A B 2 *

1 constitutes legal consideration for the provision of those
2 complimentary meals to its employees, independent contractors,
3 patrons or guests.

4 (b) Because a business entity receives legal consideration
5 when it provides such complimentary meals to its employees,
6 independent contractors, patrons or guests, the provision of each
7 such complimentary meal by the business entity constitutes a sale
8 within the meaning of the provisions of this chapter.

9 2. If a business entity provides complimentary meals on a
10 regular basis to its employees, independent contractors, patrons or
11 guests, the Department shall, in administering the provisions of this
12 chapter ~~[, the Department shall, pursuant to NRS 372.185, calculate]~~
13 :

14 (a) Consider the provision of each such complimentary meal
15 by the business entity to constitute a sale within the meaning of the
16 provisions of this chapter; and

17 (b) Calculate the amount of tax imposed on ~~[the use or other~~
18 ~~consumption of meals provided by an employer to his employees]~~
19 each such sale pursuant to NRS 372.105 based on the cost of the
20 specific components of ~~[those meals if:~~

21 ~~—1. The meals are furnished on a regular basis on the premises~~
22 ~~of the employer for the convenience of the employer; and~~

23 ~~—2. The employer does not charge the employees a specific fixed~~
24 ~~price per] the complimentary meal.~~

25 3. As used in this section, “complimentary meal” means
26 prepared food intended for immediate consumption that a business
27 entity:

28 (a) Furnishes or serves on the premises of the business entity;
29 and

30 (b) Provides free of charge or for a specific fixed price per
31 meal which is less than the cost of the specific components of the
32 meal.

33 Sec. 4. NRS 374.635 is hereby amended to read as follows:

34 374.635 1. If the Department determines that any amount,
35 penalty or interest has been paid more than once or has been
36 erroneously or illegally collected or computed, the Department shall
37 set forth that fact in the records of the Department and shall certify
38 to the board of county commissioners the amount collected in
39 excess of the amount legally due and the person from whom it was
40 collected or by whom paid. If approved by the board of county
41 commissioners, the excess amount collected or paid must be
42 credited on any amounts then due from the person pursuant to this
43 chapter, and the balance must be refunded to the person, or his
44 successors, administrators or executors.



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1 2. Any overpayment of the use tax by a purchaser to a retailer
2 who is required to collect the tax and who gives the purchaser a
3 receipt therefor pursuant to NRS 374.190 to 374.260, inclusive, ~~and~~
4 ~~374.727,~~ must be credited or refunded by the county to the
5 purchaser.

6 **Sec. 5.** NRS 374.645 is hereby amended to read as follows:

7 374.645 No credit or refund of any amount paid pursuant to
8 NRS 374.190 to 374.260, inclusive, ~~and 374.727~~ may be allowed
9 on the ground that the storage, use or other consumption of the
10 property is exempted pursuant to NRS 374.350, unless the person
11 who paid the amount reimburses his vendor for the amount of the
12 sales tax imposed upon his vendor with respect to the sale of the
13 property and paid by the vendor to the county.

14 **Sec. 6.** NRS 374.727 is hereby amended to read as follows:

15 374.727 ~~{in}~~

16 **1. The Legislature finds and declares that:**

17 **(a) When a business entity provides complimentary meals on a**
18 **regular basis to its employees, independent contractors, patrons or**
19 **guests, the business entity receives a valuable benefit, including,**
20 **but not limited to, goodwill and convenience, in exchange for the**
21 **provision of those complimentary meals, and that valuable benefit**
22 **constitutes legal consideration for the provision of those**
23 **complimentary meals to its employees, independent contractors,**
24 **patrons or guests.**

25 **(b) Because a business entity receives legal consideration**
26 **when it provides such complimentary meals to its employees,**
27 **independent contractors, patrons or guests, the provision of each**
28 **such complimentary meal by the business entity constitutes a sale**
29 **within the meaning of the provisions of this chapter.**

30 **2. If a business entity provides complimentary meals on a**
31 **regular basis to its employees, independent contractors, patrons or**
32 **guests, the Department shall, in** administering the provisions of this
33 chapter ~~the Department shall, pursuant to NRS 374.190, calculate~~
34 **:**

35 **(a) Consider the provision of each such complimentary meal**
36 **by the business entity to constitute a sale within the meaning of the**
37 **provisions of this chapter; and**

38 **(b) Calculate** the amount of tax imposed on ~~the use or other~~
39 ~~consumption of meals provided by an employer to his employee~~
40 **each such sale pursuant to NRS 374.110** based on the cost of the
41 specific components of ~~those meals if:~~

42 ~~1. The meals are furnished on a regular basis on the premises~~
43 ~~of the employer for the convenience of the employer; and~~

44 ~~2. The employer does not charge the employees a specific fixed~~
45 ~~price per~~ **the complimentary meal.**



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1 **3. As used in this section, “complimentary meal” means**
2 ***prepared food intended for immediate consumption that a business***
3 ***entity:***

4 ***(a) Furnishes or serves on the premises of the business entity;***
5 ***and***

6 ***(b) Provides free of charge or for a specific fixed price per***
7 ***meal which is less than the cost of the specific components of the***
8 ***meal.***

9 **Sec. 7.** This act becomes effective upon passage and approval.

