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

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

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

Section 1. The Legislature finds and declares that:

1. The provisions of chapters 372 and 374 of NRS impose sales taxes on the retail sale in this State of tangible personal property and impose use taxes on the storage, use or other consumption in this State of tangible personal property.

2. Section 3[A] of Article 10 of the Nevada Constitution and NRS 372.284 and 374.289 specifically exempt "food for human consumption" from the sales and use taxes imposed by chapters 372 and 374 of NRS. However, by their express terms, the constitutional and statutory food exemptions do not apply to "prepared food intended for immediate consumption."

3. In *Sparks Nugget, Inc. v. State ex rel. Department of Taxation*, 124 Nev. Adv. Op. 15, 179 P.3d 570 (2008), the Nevada Supreme Court held that under the constitutional and statutory food exemptions, 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. In reaching its holding, the Court explained that the primary issue in the case was the application of use taxes, and not the application of sales taxes. Consequently, the Court stated that "complimentary meals such as the ones at issue in this case may be subject to sales tax where consideration is properly demonstrated."

4. Pursuant to NRS 372.060 and 374.065, a "sale" is defined as any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. Under

this definition, a “sale” includes the furnishing or serving, for a consideration, of prepared food intended for immediate consumption.

5. This act clarifies that under the existing provisions of chapters 372 and 374 of NRS, when a business entity provides, on a regular basis, prepared food intended for immediate consumption to its employees, independent contractors, patrons or guests in the form of complimentary meals, 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.

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

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

2. This act applies both prospectively and retrospectively to:

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

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

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

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

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

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

372.727 **~~[In]~~**

1. The Legislature finds and declares that:

(a) 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.

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

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

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

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

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

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

3. As used in this section, "complimentary meal" means prepared food intended for immediate consumption that a business entity:

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

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

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

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

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

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

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

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

374.727 **[**~~In~~**]**

1. The Legislature finds and declares that:

(a) 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.

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

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

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

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

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

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

3. As used in this section, "complimentary meal" means prepared food intended for immediate consumption that a business entity:

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

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

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