

SENATE BILL NO. 25—COMMITTEE ON
REVENUE AND ECONOMIC DEVELOPMENT

(ON BEHALF OF THE DEPARTMENT OF TAXATION)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Revenue and
Economic Development

SUMMARY—Revises provisions governing the determination of whether food for human consumption is subject to sales and use taxes. (BDR 32-282)

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

~

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

AN ACT relating to taxation; revising provisions governing the determination of whether food for human consumption is subject to sales and use taxes; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Nevada Tax Commission to enter into the Streamlined Sales and Use Tax Agreement and to take any other actions reasonably required to implement the provisions of the Agreement, such as adopting necessary regulations. (NRS 360B.110)

Existing law generally exempts food for human consumption from sales and use taxes in this State. However, existing law excludes from this exemption, and imposes sales and use taxes on, prepared food intended for immediate consumption. (Nev. Const. Art. 10, § 3[A]; NRS 372.284, 374.289) Consistent with the Agreement, existing law defines “prepared food” to include food sold with eating utensils provided by the seller. (NRS 360B.460) In accordance with its obligation to adopt regulations to implement the Agreement, the Nevada Tax Commission adopted, and the Legislative Commission approved, LCB File No. R056-18 which establishes a method to determine whether food sold at retail is deemed to be sold with eating utensils provided by the seller. Under LCB File No. R056-18, this determination is based on the percentage of food sold by the seller that qualifies as prepared food. This methodology was derived from interpretive guidance on the meaning of “prepared food” as used in the Agreement, which was adopted by the Streamlined Sales Tax Governing Board, of which Nevada is a member state. (Streamlined Sales Tax Governing Board, Interpretation 2006-04, April 18, 2006)



20 This bill eliminates a requirement of existing law which predates this State's
21 adoption of the Streamlined Sales and Use Tax Agreement and which requires the
22 Department of Taxation, in determining whether food intended for human
23 consumption is subject to the sales and use tax, to base its determination on whether
24 the food is intended for immediate consumption and not on the type of
25 establishment where the food is sold. (NRS 372.2841, 374.2891)

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

- 1 **Section 1.** NRS 372.2841 and 374.2891 are hereby repealed.
2 **Sec. 2.** This act becomes effective upon passage and approval.
-

TEXT OF REPEALED SECTIONS

372.2841 Basis for determining exemption of food for human consumption. In administering the provisions of NRS 372.284, the Department shall determine the exemption from the gross receipts from the sale and storage, use or other consumption of food for human consumption on the basis of whether the food is intended for immediate consumption and not on the type of establishment where the food is sold.

374.2891 Basis for determining exemption of food for human consumption. In administering the provisions of NRS 374.289, the Department shall determine the exemption from the gross receipts from the sale and storage, use or other consumption of food for human consumption on the basis of whether the food is intended for immediate consumption and not on the type of establishment where the food is sold.

