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Posted 10/29/2018

**NOTICE OF INTENT TO ACT UPON A REGULATION**

**Notice of Hearing for the Adoption of**

**LCB File No. R143-18**

**Nevada Tax Commission**

The Nevada Tax Commission will hold a Public Hearing at **9:00 a.m. on Monday, December 3, 2018** at the Nevada Department of Health and Human Services at 4150 Technology Way, Room 303, Carson City, NV 89706 & Video Conferenced at the Nevada Department of Health Care Financing & Policy at 1210 S. Valley View Blvd., Ste. 104, Las Vegas, NV 89102. The purpose of the hearing is to receive comments from all interested parties regarding the adoption of a regulation that pertains to LCB File No. R143-18.

The following information is provided pursuant to the requirements of NRS 233B.0603:

**1. Need and purpose of the proposed regulations or amendments**

The need and purpose of the proposed regulation is to establish a standard to be used to determine whether an overpayment of certain taxes was made intentionally or by reason of carelessness such that the taxpayer is not entitled to be paid interest on a refund of the overpayment.

**2. How to obtain the approved or revised text of regulations prepared by LCB**

You may obtain a copy of the proposed regulation by writing to the Nevada Department of Taxation, 1550 College Parkway, Carson City, Nevada, 89706; or by calling their office at (775) 684-2059. The Revised Proposed Regulation is also available for review and download on the Department of Taxation website: <https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/R143-18-Department-Revised-Draft-Proposed-Regulation.pdf>

### 3. Methods used in determining the impact on a small business

The Department used informed, reasonable judgment in determining that there will not be a negative impact on small businesses due to the nature of the regulation changes. Initially the Department conducted its own analysis by considering the extent of the regulatory provisions contained in LCB File No. R143-18.

The Department emailed out the small business impact questionnaire to 229 members on the interested parties list and to the Nevada Taxpayers Association. One response was received.

- The response received suggested that the interest should be paid at a maximum amount of \$8,000.00 and only a single time and for any reoccurring incidents, no interest should be paid.

The Department also held a workshop on September 14, 2018. No correspondence or testimony was received at the workshop.

### 4. Estimated economic effect of regulations on business and the public

#### a. Adverse and beneficial effects

The proposed permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public.

#### b. Immediate and long-term effects

The proposed permanent regulation presents no reasonably foreseeable or anticipated immediate or long-term effects to businesses or to the general public.

### 5. Cost for enforcement of the regulations

The proposed permanent regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

### 6. Overlap or duplication of other state or local governmental agencies

The proposed temporary regulation does not overlap or duplicate any regulation of other state or local governmental entities.

### 7. Regulation required by federal law

Not applicable.

### 8. More stringent than federal regulations

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

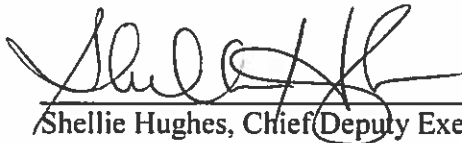
### 9. New or increases in existing fees

The proposed regulations do not include new fees or increase in existing fees.

Persons wishing to comment on the proposed action of the Nevada Tax Commission may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Tax Commission, 1550 E. College Parkway, Suite 115, Carson City, Nevada 89706. Written submissions must be received at least two weeks prior to the above scheduled public hearing.

A copy of this notice and the proposed permanent regulations to be adopted and amended will be on file at the Nevada State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed permanent regulations to be adopted and amended will be available at the Department of Taxation, 1550 College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada; Department of Taxation- 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of the proposed permanent regulations will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.



Shellie Hughes, Chief Deputy Executive Director  
October 29, 2018

Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the Department of Taxation in writing or by calling 775-684-2030 no later than five working days prior to the meeting.

**Notice has been posted at the following locations:** The Department of Taxation - 1550 College Parkway, Carson City, Nevada. Notice was mailed to each County Public Library for posting.

**Notice has been EMAILED for posting at the following locations:** Department of Taxation - 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation - 555 E. Washington Avenue, Grant Sawyer Office Building, Las Vegas, Nevada; Department of Taxation - 2550 Paseo Verde Parkway, Suite 180, Henderson; The Legislative Building, Capitol Complex, Carson City, Nevada; and the Nevada State Library, 100 Stewart Street, Carson City, Nevada, Interested Parties Group & Mailing List maintained by the Department. Notice of this meeting was posted on the Internet through the Department of Taxation website <https://tax.nv.gov/>, on the Legislative website at [www.leg.state.nv.us](http://www.leg.state.nv.us), and at the Nevada Public Notice Website <https://notice.nv.gov/>.

**PROPOSED REGULATION OF  
THE NEVADA TAX COMMISSION**

**LCB File No. R143-18**

July 25, 2018

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

AUTHORITY: §1, NRS 360.090; §2, NRS 360.090, 360.200 and 360.250.

A REGULATION relating to taxation; establishing the standard to be used to determine whether an overpayment of certain taxes was made intentionally or by reason of carelessness such that the taxpayer is not entitled to be paid interest on a refund of the overpayment; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law requires interest to be paid to a taxpayer who receives and refund of an overpayment of certain taxes unless the Department of Taxation determines that the overpayment was made intentionally or by reason of carelessness. (NRS 360.2935, 360.2937, 363A.170, 363B.160, 363C.620, 368A.270, 372.665, 372A.320, 372B.200, 374.670) Existing law also requires interest to be paid to a taxpayer who receives a refund of an overpayment of property taxes unless the county treasurer of the county determines that the overpayment was made intentionally or by reason of carelessness. (NRS 361.475, 361.486) This regulation establishes the standards to be used by the Department or a county treasurer in determining whether an overpayment of certain taxes was made intentionally or by reason of carelessness.

**Section 1.** Chapter 360 of NAC is hereby amended by adding thereto a new section to read as follows:

*For the purposes of NRS 363A.170, 363B.160, 363C.620, 368A.270, 372.665, 372A.320, 372B.200 and 374.670, an overpayment of a tax imposed by chapter 363A, 363B, 363C, 368A, 372, 372A, 372B or 374 of NRS, as applicable, and administered by the Department was made:*

*1. Intentionally if the overpayment was made for any reason other than a good-faith belief that the taxpayer owed the tax and paid the amount of tax owed by the taxpayer.*

*2. By reason of carelessness if the overpayment is the result of the failure of the taxpayer to make reasonable and prudent efforts to avoid the overpayment. Such reasonable and prudent efforts may include, without limitation:*

- (a) Maintaining accurate and complete books and records;*
- (b) Correcting errors in the computation of the tax which were identified by an audit conducted before the overpayment;*
- (c) Investigating the taxability of transactions during an audit when the overpayment was reasonably identifiable;*
- (d) Ceasing to make overpayments after receiving a refund for a prior overpayment involving the same or similar issues;*
- (e) Ceasing to make overpayments resulting from repeated transactions or transactions of a similar type when the taxability of the transactions is governed by a regulation or law that is commonly followed in the taxpayer's industry, trade or practice and the transactions are conducted over a period of time of sufficient length that a reasonable person would have discovered and corrected the issue causing the overpayment;*
- (f) Seeking an advisory opinion or other written advice from the Department concerning an interpretation of law when the taxpayer is unsure of the correct interpretation of the law; and*
- (g) Seeking advice on complex tax matters from a certified public accountant certified to practice in this State pursuant to chapter 628 of NRS or any other person who is certified or licensed in this State to practice a profession the members of which engage in the provision of advice on tax matters and who has knowledge of, or experience in, tax matters.*

Sec. 2. Chapter 361 of NAC is hereby amended by adding thereto a new section to read as follows:

*For the purposes of NRS 361.486, an overpayment of a tax imposed by chapter 361 of NRS was made:*

*1. Intentionally if the overpayment is made for any reason other than a good-faith belief that the amount of tax paid was the amount of tax owed.*

*2. By reason of carelessness if the overpayment is the result of the failure of the taxpayer to make reasonable and prudent efforts to avoid the overpayment. Such reasonable and prudent efforts may include, without limitation:*

*(a) Maintaining accurate and complete books and records;*

*(b) Correcting errors in the computation of the tax which were identified by an audit conducted before the overpayment;*

*(c) Investigating the taxability of transactions during an audit when the overpayment was reasonably identifiable;*

*(d) Ceasing to make overpayments after receiving a refund for a prior overpayment involving the same or similar issues;*

*(e) Ceasing to make overpayments resulting from repeated transactions or transactions of a similar type when the taxability of the transactions is governed by a regulation or law that is commonly followed in the taxpayer's industry, trade or practice and the transactions are conducted over a period of time of sufficient length that a reasonable person would have discovered and corrected the issue causing the overpayment;*

*(f) Seeking an advisory opinion or other written advice from the appropriate state or local governmental entity concerning an interpretation of law when the taxpayer is unsure of the correct interpretation of the law; and*

*(g) Seeking advice on complex tax matters from a certified public accountant certified to practice in this State pursuant to chapter 628 of NRS or any other person who is certified or licensed in this State to practice a profession the members of which engage in the provision of advice on tax matters and who has knowledge of, or experience in, tax matters.*