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DEPARTMENT OF TAXATION

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Posted: November 4, 2016

NOTICE OF PUBLIC HEARING
FOR THE ADOPTION OF TEMPORARY REGULATION OF THE
NEVADA TAX COMMISSION

The Nevada Tax Commission (Tax Commission) will hold a public hearing on December 5, 2016 commencing at 9:00 a.m. at the Silver State Insurance Exchange, 2310 S. Carson Street, Suite 2, Carson City with video-conferencing to the Silver State Insurance Exchange, 150 N. Stephanie, Suite 100, Henderson, Nevada. The Tax Commission will receive testimony from all interested persons and consider and take action on proposed temporary adoption of amendments, additions and deletions to the Nevada Administrative Code as identified in **Temporary Regulation on Locally-Assessed Aircraft Taxable Situs and Allocation of Taxable Value**.

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

1. The Need for and Purpose of the Proposed Temporary Regulations.

These regulations provide guidance to county assessors in the proper determination of taxable situs in and outside of Nevada for aircraft. In addition, the regulation provides guidance on the proper allocation of taxable value when multiple locations with tax situs exist. The purpose is to improve uniformity in the property tax treatment of aircraft in all Nevada jurisdictions.

Terms or Substance of the Proposed Temporary Regulation or Description of the Subjects and Issues Involved.

Sections 3 through 22 provide definitions of terms and phrases used in the body of the proposed temporary regulation. In particular, the term "aircraft" is defined as a contrivance used or designed for the navigation of or for flight in the air. A number of examples are provided. Centrally-assessed aircraft of companies of an interstate or inter-county nature are specifically excluded from the definition of aircraft because temporary regulations already exist which cover centrally-assessed aircraft. Also included in the definitions in **Section 21** is the term "Taxable situs," which means the location or locations where aircraft receives benefits and protection from the local government sufficient to confer the power to tax.

Section 23 provides for the type of documentation that would show that an aircraft is part of the inventory of the business and therefore exempt. The burden for proving that an aircraft is eligible for the exemption is on the taxpayer. **Section 23** provides a list of the types of documents necessary to show the aircraft is eligible for exemption.

Section 24 provides that aircraft owned by an active-duty serviceperson or his or her spouse serving in Nevada does not establish taxable situs pursuant to federal law with certain exceptions. **Section 25** provides that an aircraft owned by a foreign air carrier, based and registered abroad and used exclusively in international commerce is deemed to have not acquired taxable situs in Nevada.

Section 26 provides for the types of information that are necessary when declaring aircraft pursuant to the requirements of NRS 361.265. **Section 27** refers to the Nevada Administrative Code sections which regulate how aircraft are to be valued.

Section 28 provides the criteria by which taxable situs may be acquired. **Section 29** provides the authority to establish taxable value is conferred on the county assessor of the county where the aircraft is habitually situated when not in flight.

Section 30 provides that the burden of proof is on the taxpayer to show whether an aircraft has acquired taxable situs outside of Nevada and is therefore eligible for allocation of the taxable value. Section 30 also provides examples of the types of documents that would provide sufficient information to prove taxable situs.

Section 31 provides the authority to the county assessor to determine whether an aircraft has acquired tax situs in Nevada and in another jurisdiction. The assessor is required to allocate the portion of the aircraft's taxable value that fairly reflects its use in Nevada. The section provides the formula for calculation of the allocation of taxable value, which is the same as is currently in applied by county assessors.

Section 32 provides that an aircraft must remain listed on a county's assessment roll until the taxpayer provides written notice to the assessor that the aircraft no longer has a taxable situs in the county. **Section 33** provides that a commercial or general aircraft which is titled or registered to fractional owners must be assessed as a single taxable unit.

Section 34 provides that the portion of the total taxable value for which there was no allocation or apportionment within Nevada for the immediately preceding year is not subject to the general abatement afforded under NRS 361.4722.

2. Estimated Economic Effect of the Proposed Temporary Regulation on the Business which it is to Regulate, and the Public.

The Department determined that the regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. The proposed temporary regulation presents no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public.

Sections 23, 24, and 25 of the regulation provide clarity that aircraft meeting certain criteria either are subject to exemption or do not establish taxable situs. The types of information required by **Section 26** on property declarations are the types of information already required and collected by county assessors. **Section 27** does not change the current method of valuation of aircraft. These sections do not impose an economic burden on small business.

Section 28 lays the foundation for determining taxable situs, thus providing taxpayers the opportunity to reduce the taxable value allocated to Nevada. **Section 30** conforms State policy to many U.S. Supreme Court and other court decisions that provide a tax must be fairly apportioned to a state if more than one tax situs exists. The section also provides guidance to the taxpayer on how to prove taxable situs inside and outside of Nevada. **Section 31** provides a formula in which the ratio of the time spent in a taxable situs by using the number of overnights within Nevada is divided by the total number of overnights in the fiscal year. The resulting percentage is assumed to be the allocation percentage representing the taxable situs in Nevada. This formula represents existing practice and only affects those aircraft which are eligible and apply for an allocated value.

A. Adverse and Beneficial Effects.

The economic benefit is derived from an improved and consistent administration of the determination of taxable situs and the allocation of taxable value of aircraft to Nevada when more than one taxable situs exists. The regulation presents no reasonably foreseeable or anticipated, adverse economic effects to small businesses or to the general public.

B. Immediate and Long-Term Effects.

The immediate and long-term effects will be to improve the uniform and equal application of property taxes on aircraft.

3. The Methods Used by the Agency in Determining the Impact on a Small Business.

The Department mailed or emailed a Small Business Impact Statement and Questionnaire on October 13, 2016 to persons and businesses on the Department's interested parties list. Three responses were

received. Amendments were made after testimony at the workshops to reflect the current method of allocation of taxable value and therefore the Department believes there is minimal to no new impact on a small business.

4. Estimated Cost to Agency for Enforcement of the Proposed Temporary Regulation.

The proposed temporary regulation is expected to improve the uniform administration of the property tax on aircraft. The estimated cost of enforcement related to administration of the program to the Department of Taxation is minimal.

5. Regulations of Other State or Local Governmental Agencies which the Proposed Temporary Regulation Overlaps or Duplicates and the Necessity Therefore.

The proposed temporary regulation does not overlap or duplicate regulations of other state or local governmental agencies.

6. Establishment of New Fee or Existing Fee Increase.

None

7. Regulation required by Federal law.

Not applicable

8. More stringent than federal regulation

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

9. How to obtain the approved or revised text of regulations:

You may obtain a copy of the proposed regulation by writing to the Nevada Department of Taxation, Division of Local Government Services, 1550 College Parkway, Carson City, Nevada 89706; or by calling the office at (775) 684-2100. The proposed regulation is also available for review and download on the Department of Taxation website: http://tax.nv.gov/Boards/Public_Meetings/

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 Department of Taxation, 1550 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 temporary 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 temporary regulations to be adopted and amended will be available at the Department of Taxation, at the addresses listed below and on the Department of Taxation website, <http://tax.nv.gov/> 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 temporary 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.

Deonne Contine, Secretary



By Terry E. Rubald, Deputy Executive Director
Department of Taxation
November 4, 2016

Note 1: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Department of Taxation in writing, at 1550 College Parkway, Carson City Nevada, 89706 or call (775) 684-2180 prior to the meeting.

Note 2: Materials and files for items on this notice are maintained in the offices of the Department of Taxation located in Carson City, Nevada. Requests for copies of materials and files for items on this notice may be made to:
Terry Rubald, Deputy Executive Director, Department of Taxation, 1550 College Parkway, Suite 115, Carson City, NV 89706

Note 3: Notice of this meeting was posted in the following Carson City, Nevada locations: Department of Taxation, 1550 College Parkway; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was emailed for posting to the following locations: Department of Taxation, 4600 Kietzke Lane, Building L, Suite 235, Reno; Department of Taxation, 2550 Paseo Verde, Suite 180, Henderson; Department of Taxation, 555 E. Washington Street; Las Vegas; Clark County Office, 500 South Grand Central Parkway, Las Vegas. Notice of this meeting was posted on the Internet through the Department of Taxation website <http://tax.nv.gov/> and on the Internet website maintained by the Legislative Counsel Bureau <http://leg.state.nv.us/> and the Department of Administration website <https://notice.nv.gov/>.

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

Temporary Regulation 009-16

Draft for Adoption Hearing December 5, 2016

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

AUTHORITY: §§1-, NRS 360.090, 360.250, 361.227, and 361.260;

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 34, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 34, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 22, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *1. “Aircraft” means any contrivance used or designed for the navigation of or for flight in the air, other than a parachute or similar emergency safety device. Aircraft includes, but is not limited to:*

- (a) General aircraft;*
- (b) Commercial aircraft;*
- (c) Unmanned aircraft systems, and small unmanned aircraft systems, commonly known as drones;*
- (d) Kit aircraft;*
- (e) Light-sport aircraft;*
- (f) Ultra-light aircraft;*
- (g) Hang gliders;*

(h) Hot air balloons; and

(i) Fixed-wing aircraft with a weight of less than 12,500 pounds used by an unscheduled air transport company that would otherwise be subject to valuation by the Nevada Tax Commission, if the company elects, in the form and manner prescribed by the Department, to have the property of the company assessed by a county assessor pursuant to NRS 361.320(10).

2. “Aircraft” does not include any of the following:

(a) Rockets or missiles;

(b) Any property of an interstate or inter-county nature used directly in the operation of an scheduled or unscheduled air transport company subject to valuation by the Nevada Tax Commission pursuant to NRS 361.320(1), except fixed-wing aircraft meeting the conditions of NRS 361.320(10).

Sec. 4. *“Allocation” means the process of assigning a portion of a property value having taxable situs in multiple states to an individual state or county using a formula.*

Sec. 5. *“Apportionment” means the process of assigning or spreading a portion of the taxable property value that is allocated to an individual state or county to that state’s or county’s various tax levying districts.*

Sec. 6. *1. “Commercial aircraft” means civilian aircraft operated for compensation or hire and used in the carriage of persons or property.*

(a) The term includes aircraft used in an on-demand, scheduled, or supplemental operation, except aircraft operated by a scheduled or unscheduled air transport company subject to valuation by the Nevada Tax Commission.

(b) Where it is doubtful that an operation is for “compensation or hire”, the test applied is whether the carriage by air is merely incidental to the operator’s other business or is, in itself, a major enterprise for profit.

Sec. 7. *“Domicile” means:*

(a) The permanent, principal home to which a person returns or intends to return after an absence; or

(b) The principle place where a business has its headquarters or principle place of business located.

Sec. 8. *“FAA” means the Federal Aviation Administration, a regulatory agency within the U.S. Department of Transportation responsible for ensuring the safety of civil aviation.*

Sec. 9. *“Foreign air carrier” means any person other than a citizen of the United States, who undertakes directly, by lease or other arrangement, to engage in air transportation.*

Sec. 10. *“General aircraft” means civilian aircraft operated for purposes other than commercial passenger or cargo transport, registered with, and having an airworthiness certificate issued from, the FAA.*

Sec. 11. *“Habitually situated” means the location where an aircraft spends the most ground time.*

Sec. 12. *“Jurisdiction” means the taxing entity, state, or nation that has jurisdiction to tax a property because of the property’s location or use, or because of the owner’s domicile or principal place of business.*

Sec. 13. *1. “Kit aircraft” means an aircraft:*

(a) Assembled by a person from a kit manufactured by the holder of an FAA production certificate for that kit, without the supervision and quality control of the production certificate holder; and

(b) Issued a special airworthiness certificate by the FAA.

Sec. 14. *“Light-sport aircraft” has the meaning ascribed to it in 14 CFR §1.1 .*

Sec. 15. *“On-demand operation” has the meaning ascribed to it in 14 CFR §110.2 .*

Sec. 16. 1. *“Scheduled and unscheduled air transport company” means a commercial operator:*

(a) Engaged in the common carriage of persons or property for compensation or hire;

(b) Who holds a certificate from the FAA authorizing operations under parts 121, 125 or 135 of 14 CFR Chapter I, Subchapter G;

(c) Who uses property of an interstate or inter-county nature directly in the operations of the company; and

(d) Whose property is subject to valuation by the Nevada Tax Commission pursuant to NRS 361.320(1).

Sec. 17. *“Scheduled operation” has the meaning ascribed to it in 14 CFR §110.2 .*

Sec. 18. *“Service member” means a member of the uniformed services, as that term is defined in 10 U.S.C. §101(a)(5), as used in 50 U.S.C. App. §511(1) of the Servicemembers Civil Relief Act.*

Sec. 19. *“Small unmanned aircraft” means an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.*

Sec. 20. *“Supplemental operation” has the meaning ascribed to it in 14 CFR §110.2 .*

Sec. 21. **1.** *“Taxable situs” means the location or locations where an aircraft has received opportunities, benefits and protection from a jurisdiction sufficient to confer the power to tax at that location or locations.*

Sec. 22. *“Unmanned aircraft system (UAS)” means an unmanned aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) that are required for the safe and efficient operation of the unmanned aircraft in the national airspace system.*

Sec. 23. **1.** *A person claiming an aircraft is exempt from taxation as personal property held for sale by a merchant or manufacturer pursuant to NRS 361.068(1)(a) or (b) in the ordinary course of business, has the burden of establishing to the satisfaction of the county assessor that the aircraft qualifies for the claimed exemption. The initial claim for exemption must be accompanied by the following documents as requested by the county assessor:*

(a) FAA dealer’s license;

(b) Seller’s permit;

(c) Local business license;

(d) Proof of location on an airport or airfield;

(e) Flight log; or

(f) Listing or consignment agreements.

Sec. 24. **1.** *An aircraft owned by a service member or the spouse of a service member shall not be deemed to be located or present in, or to have a taxable situs in, the tax jurisdiction in which the service member is serving in compliance with military order, unless the jurisdiction is the member’s domicile or residence or if the aircraft is used in a trade or business, pursuant to 50 U.S.C. App. §571(d)(1-3).*

2. The county assessor may request documentation from the service member confirming current active duty status.

Sec. 25. *An aircraft owned by a foreign air carrier, based and registered abroad and used exclusively in international commerce is deemed to not have acquired taxable situs in Nevada.*

Sec. 26. *1. The written statement required by NRS 361.265 setting forth information about the aircraft that is necessary to ascertain the taxable value of the aircraft includes, but is not limited to, the serial number, the make, model, year of manufacture of the aircraft, and engine and maintenance information, including the total hours logged on the aircraft following the last major overhaul of the engine of the aircraft.*

Sec. 27. *Aircraft shall be valued and assessed pursuant to the requirements of NAC 361.1345 through NAC 361.139 prior to any allocation or apportionment of taxable value.*

Sec. 28. *1. Taxable situs of an aircraft is established in a jurisdiction based on the quantity, nature, and intent of its physical presence within the jurisdiction. Physical presence must be of a permanent nature, sufficient to afford the opportunities, benefits, and protection of the taxing jurisdiction to the aircraft. The quantum of contact of the aircraft with a jurisdiction sufficient to establish taxable situs is a question of fact based on any of the following measures, without limitation:*

(a) The aircraft is used habitually in the jurisdiction, whether on a regular or irregular basis;

(b) The aircraft is habitually kept, maintained, and hangared at the location when not in use; or

(c) Property taxes have been paid to the jurisdiction.

Sec. 29. *1. If an aircraft has acquired taxable situs in Nevada, it must be assessed by the county assessor of the jurisdiction in which it is habitually situated when not in flight. For example, if tax situs is acquired in two or more Nevada counties, 100% of the taxable value allocated to Nevada is apportioned to the Nevada county in which the aircraft is habitually situated.*

2. The taxable value of an aircraft apportioned to the county must be assessed for the full fiscal year and may not be prorated if the aircraft is removed from the county prior to the end of the fiscal year.

Sec. 30. *1. If an aircraft has acquired taxable situs in Nevada and outside Nevada, the property owner may claim the taxable value of an aircraft is subject to allocation. The property owner has the burden of proving taxable situs outside Nevada has been acquired. The burden is met by providing sufficient information to satisfy the requirements of Section 28. Such information includes, without limitation:*

(a) Records kept in the normal course of business, such as mileage, flight, or maintenance logs and hangar or tie-down receipts that indicate where the aircraft has traveled, how long it was located at each destination, and the purpose of its location at each destination;

(b) Actual tax bills or notices of appraisal or assessment from another jurisdiction; or

(c) Reports filed with state or national agencies that indicate where the aircraft has traveled, how long it was located at destination, and the purpose of its location at each destination.

2. The county assessor may also request documentation supporting the domicile of the aircraft owner if it affects the nature and intent of the physical presence of the aircraft. The

documentation may include, without limitation, utility bills, vehicle registration, driver's license, income tax returns, or property ownership records.

Sec. 31. *1. The county assessor shall determine whether the aircraft has acquired taxable situs in this state and in another jurisdiction outside Nevada from the evidence supplied by the property owner. If the county assessor determines that the aircraft has acquired taxable situs in multiple locations, he or she shall allocate the portion of the aircraft's taxable value that fairly reflects its use in this state.*

2. The calculation for the allocation of taxable value to the county where the aircraft is habitually situated must be made as follows:

(a) Determine the number of overnights the aircraft spent in Nevada divided by the total number of days in the prior fiscal year beginning on July 1 and ending on June 30.

(b) Multiply the total taxable value of the aircraft by the percentage indicated by the ratio determined in subsection 2(a). The resulting value is the amount of taxable value allocated to the county where the aircraft is habitually situated.

Sec. 32. *An aircraft must remain listed on a county's assessment roll until the taxpayer provides written notice and documentation to the assessor that the aircraft no longer has a taxable situs in the county.*

Sec. 33. *1. A commercial or general aircraft which is titled or registered to fractional owners must be assessed as a single taxable unit. The fractional owners shall be treated as tenants in common for purposes of levying the taxes due.*

2. In the event the fractionally-owned aircraft is part of a fleet operated by a central manager that may be interstate or inter-county in nature, the county assessor shall consult with the Department of Taxation to determine responsibility for assessment.

Sec. 34. *For purposes of application of NRS 361.4722, 361.4723, or 361.4724, property which is not eligible for abatement for the current year includes that portion of the total taxable value for which there was no allocation or apportionment within Nevada for the immediately preceding year*