

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R161-05

November 18, 2005

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

AUTHORITY: §§1-15, 19 and 20, NRS 360.090 and 362.120; §§16-18, NRS 360.090 and 362.110; §21, NRS 360.090 and 360.230; §22, NRS 360.090.

A REGULATION relating to taxation; establishing certain deductions for the costs of reclamation from taxes on the net proceeds of any minerals extracted in this State; providing certain requirements concerning the filing and receipt of annual statements of net proceeds of extracted minerals; and providing other matters properly relating thereto.

Section 1. Chapter 362 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 15, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Closure of a mine” means the time at which:*

- 1. The operation of the mine has been completed;*
- 2. The revegetation, treatment and rehabilitation of the site of the mine have been completed; and*
- 3. A monitoring program has been implemented to monitor the site of the mine after the revegetation, treatment and rehabilitation of the site have been completed.*

Sec. 4. *“Commission” means the Nevada Tax Commission.*

Sec. 5. *“Developmental work” means any activity performed on the property of a mine which outlines the location of or prevents or gains access to the ore of the mine and prepares the ore for production, including, without limitation, drilling, rock work and construction of support systems to increase the ore reserves of the mine.*

Sec. 6. *“Qualified reclamation costs” means an amount equal to 90 percent of the reclamation costs.*

Sec. 7. *“Reclamation” means actions performed during or after a mining operation or developmental work which are consistent with the provisions of NRS concerning mines and minerals, and any regulations adopted pursuant thereto, and which are identified in a reclamation plan to shape, stabilize, revegetate or otherwise treat the land in order to return it to a safe, stable condition consistent with the establishment of a productive postmining use of the land and the abandonment of a facility in a manner which ensures the public safety, as well as the encouragement of techniques which minimize the adverse visual effects. The term does not include any action performed after the closure of a mine.*

Sec. 8. *“Reclamation costs” means the estimated costs of performing reclamation over the life of the mine which are set forth in the reclamation plan. The term excludes costs for the following long-term activities:*

1. Any costs of administration that may be required by a state or federal agency which regulates the reclamation of the mine, including, without limitation, costs related to:

- (a) Plans for engineering, design or construction;*
- (b) Contingency allowances;*
- (c) Profits of contractors;*
- (d) Liability insurance;*

(e) Payment and performance of bonds; and

(f) Any other direct or indirect costs for the administration of contracts with the state or federal agency.

2. Any costs that may be required after the closure of the mine, including, without limitation, costs that may be required to:

(a) Maintain, monitor or evaluate the site of the mine;

(b) Monitor the quality of surface water and groundwater and the impacts of the mine on the environment which receives surface water or groundwater;

(c) Stabilize and control the erosion of structures that will remain on the site; and

(d) Maintain land use and aesthetics of the site.

3. Any costs that may be necessary to ameliorate any social and economic impacts which result from a decline in the economic potential of an area affected by the mine or the burden on future generations to maintain the site of the mine.

Sec. 9. *“Reclamation plan” means a plan for reclamation, and any amendments or modifications thereto, which is approved by:*

1. The Division of Environmental Protection of the State Department of Conservation and Natural Resources pursuant to chapter 519A of NRS for a mining operation or developmental work which is conducted on land administered by this State;

2. The Bureau of Land Management of the Department of the Interior pursuant to 43 C.F.R. Part 3800 for a mining operation or developmental work which is conducted on land administered by a federal agency; or

3. Any other state or federal agency pursuant to any state or federal law which:

(a) Imposes a duty to reclaim the land disturbed by a mining operation or developmental work; or

(b) Requires a permit to engage in a mining operation or developmental work which is substantially similar to the requirements for a permit set forth in chapter 519A of NRS and any regulations adopted pursuant thereto.

Sec. 10. *“Reporting period” means the calendar year for which the statement required by NRS 362.110 is filed.*

Sec. 11. *“Taxpayer” means a person who is required by the Department to pay a tax on the net proceeds of any mineral extracted in this State pursuant to chapter 362 of NRS.*

Sec. 12. *For the purposes of paragraph (a) of subsection 3 of NRS 362.120, the Commission interprets deductions from net proceeds of extracted minerals for the “actual cost of extracting the mineral” by a taxpayer to include:*

1. If the taxpayer reports deductions according to an accrual method of accounting, a deduction for qualified reclamation costs for the reporting period, which must be calculated pursuant to subsection 1 of section 13 of this regulation.

2. If the taxpayer reports deductions according to a cash method of accounting, a deduction for the actual reclamation costs which were incurred during the reporting period.

Sec. 13. *1. A taxpayer who reports a deduction pursuant to subsection 1 of section 12 of this regulation according to an accrual method of accounting may claim a deduction for qualified reclamation costs incurred for the reporting period in an amount equal to the amount calculated by:*

(a) Dividing the number of units of production from the mine which were sold during the reporting period by the total number of units of production which are available to be recovered throughout the life of the mine;

(b) Multiplying the amount calculated pursuant to paragraph (a) by the qualified reclamation costs; and

(c) Subtracting the actual reclamation costs which were incurred during the reporting period from the amount calculated pursuant to paragraph (b).

2. A taxpayer who reports a deduction pursuant to subsection 2 of section 12 of this regulation according to a cash method of accounting may claim a deduction for the actual reclamation costs incurred during the reporting period.

Sec. 14. *1. A taxpayer who has reported deductions for reclamation costs or qualified reclamation costs according to an accrual method of accounting in a reporting period may not change his method of accounting to a cash method of accounting in a subsequent reporting period.*

2. Except as otherwise provided in this subsection, a taxpayer who has reported deductions for reclamation costs or qualified reclamation costs according to a cash method of accounting in a reporting period may not change his method of accounting to an accrual method of accounting in a subsequent reporting period unless the Department, upon written application of the taxpayer, approves a change in the method of accounting. If the taxpayer demonstrates to the Department that a proposed change in the method of accounting will not result in the double counting of any deductions for reclamation costs or qualified reclamation costs for that reporting period, the Department may approve the change in the method of accounting.

Sec. 15. Except as otherwise provided in this section, if a taxpayer sells the assets of a mine before closure of the mine, the buyer must report any deductions for reclamation costs or qualified reclamation costs according to the same method of accounting used by the seller, unless the Department, upon written application of the taxpayer, approves a change in the method of accounting. If the buyer demonstrates to the Department that a proposed change in the method of accounting will not result in a deduction for qualified reclamation costs or reclamation costs which have been previously deducted by the seller, the Department may approve the change in the method of accounting.

Sec. 16. 1. An annual statement which is required to be filed pursuant to NRS 362.110 and which is transmitted through the United States mail shall be deemed to have been received on the date shown by the post office cancellation mark stamped on the envelope containing it, or on the date it was mailed if proof satisfactory to the Commission establishes that the document or remittance was timely deposited in the United States mail, postage prepaid, and properly addressed to the Commission.

2. A receipt for material sent by certified or registered mail, if different than the post office cancellation mark, will prevail if the date on the receipt is earlier than the cancellation date.

3. A record authenticated by the post office that the cancellation date on certain batches of mail was erroneous is proof satisfactory to the Commission that the mailing was made on a date other than the post office cancellation date.

4. If it is known that the postal service was inoperative at a certain time due to strikes, riots, warfare, acts of God or other reasons, the Commission will consider the circumstances

and, if there is other evidence of timely mailing, will accept the evidence and deem the return or payment timely.

5. Under no circumstances will:

(a) The cancellation date affixed by a postage meter in the possession of the taxpayer or other person; or

(b) Statements by the taxpayer or his employees,

↪ be considered sufficient to refute the post office cancellation date as the date of mailing.

Sec. 17. *If a taxpayer submits an annual statement which is required to be filed pursuant to NRS 362.110 and which does not include all applicable information, documentation, reports and statements, the Department may consider the taxpayer to have failed to file the statement.*

Sec. 18. *If the Department does not receive an annual statement which is required to be filed pursuant to NRS 362.110 and alleges that the taxpayer has not filed the statement, the taxpayer may submit documentation which establishes that the statement was properly filed. If the Department subsequently determines the annual statement was filed properly, the Department may waive the penalty for the failure to file a statement which is imposed pursuant to NAC 362.085.*

Sec. 19. NAC 362.040 is hereby amended to read as follows:

362.040 1. Except as otherwise provided by NAC 362.100 to 362.160, inclusive, leasehold improvements and buildings must be depreciated over a 20-year period using the straight-line method.

2. Except as otherwise provided by NAC 362.100 to 362.160, inclusive, fixed machinery and equipment must be depreciated over a 20-year period using the straight-line method.

3. Mobile machinery and equipment must be depreciated over a 10-year period using the straight-line method.

4. Automobiles and light service vehicles must be depreciated over a 5-year period using the straight-line method.

5. Except as otherwise provided by NAC 362.100 to 362.160, inclusive, an integrated processing assembly must be depreciated over a 20-year period using the straight-line method. Subsequent additions to the unit must also be reported and be depreciated over a 20-year period using the straight-line method.

6. ~~[Depreciation of assets on hand as of January 1, 1980, must be calculated at the rate of 2.1 percent per year for the years ending before January 1, 1975, plus the depreciation allowance granted by the Department for the period between January 1, 1975, and January 1, 1980. The total depreciation thus calculated must be deducted from the acquisition cost and is the basis for continuing depreciation according to the classification of the asset.~~

~~—7.]~~ If any property is disposed of before the end of the depreciation period, the remaining amount of allowable depreciation, if the property had remained in use, may be reported in total as an additional expense of depreciation for the reporting period. The amount of depreciation must be reduced by the amount of any consideration received for the property from sale, insurance recovery, trade-in ~~[.]~~ or any other reimbursement, but not below zero.

~~[8.]~~ 7. A mining operator may petition the Nevada Tax Commission for reconsideration of the allowable depreciation of property. The Commission may adjust the allowable depreciation if the petitioner presents satisfactory evidence that the expected life of the property is longer than that which is provided for in this section. If the Commission finds that the petitioner has presented satisfactory evidence that the expected life of the property is shorter than that which is

provided for in this section, the petitioner must comply with the provisions of NAC 362.100 to 362.160, inclusive, to apply for permission to depreciate the property in the accelerated manner prescribed by NAC 362.140.

Sec. 20. NAC 362.050 is hereby amended to read as follows:

362.050 1. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are deductible except as limited by subsection 6 of NRS 362.120:

(a) The cost of renting equipment , if the amount paid as rental is commercially reasonable in the circumstances;

(b) The cost of contracting for all or part of the mine's operations, if the contract price is commercially reasonable in the circumstances;

(c) The cost of services which a Nevada mine receives under contract from its corporate office or the office of a related corporation, if:

(1) The cost is commercially reasonable in the circumstances; and

(2) The cost is separately stated in a manner consistent with good accounting practices;

(d) The reasonable cost of management provided to a joint venture by a member, if the fees relate directly to operation of the mine;

(e) The sales and use taxes expended for tangible goods or taxable services to the extent that the cost of such goods or services is an allowable operating cost;

(f) The direct cost of housing for employees that is owned and maintained by the operator of the mine, including, without limitation, any losses to the housing that are incurred by the operator of the mine, but as reduced by any payments received for rental of the property; ~~land~~

(g) *If the taxpayer has a policy which prohibits the personal use of a vehicle by an employee, the cost of vehicle allowances to the extent that the vehicle is used for the business of the mine;*

(h) *The cost of transportation services provided by a third party or the owner of the mine for employees to get to and from a point of extraction or reduction of the mine; and*

(i) The cost of compensation for employees. As used in this paragraph, “compensation” means wages, salaries, paid vacation leave, paid sick leave, performance-related bonuses, contributions to and administrative costs of qualified pension and retirement plans, 401k and similar deferred benefit plans, dental insurance, medical insurance, accidental death and dismemberment insurance, Medicare contributions, social security payments, medical clinic and hospital expenses, state and federal unemployment compensation contributions or payments, workers’ compensation insurance, and postemployment training expenses for training conducted in compliance with the Mine Safety and Health Administration and the Division of Industrial Relations of the Department of Business and Industry or their successor organizations.

2. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are not deductible:

- (a) Cost or expenses which are capitalized;
- (b) Gifts, grants and donations;
- (c) Costs of public relations and influencing or seeking to influence governmental activities;
- (d) Costs of exploration and development related to ore bodies outside the geographic area which can economically provide a source of raw materials to the plant located at the mine;
- (e) Federal income taxes, all property taxes, the business license tax imposed pursuant to chapter 364A of NRS, the tax on net proceeds of minerals, and any other tax that an operator of a

mine is required to pay to the Federal Government, this State or any other state, or a political subdivision thereof;

(f) Costs associated with providing health clubs for employees;

(g) Except as otherwise provided in paragraph (f) of subsection 1 of this section and paragraph (a) of subsection 2 of NAC 362.030, costs incurred for preemployment activities, including, without limitation, reimbursement for expenses for housing, moving and relocation;

(h) Except as otherwise provided in paragraph ~~(g)~~ (i) of subsection 1, costs associated with union trust funds;

(i) Costs associated with providing day care facilities for the children of employees;

(j) General liability insurance; and

(k) Excess policies of general liability insurance.

3. If a cost is partially deductible and partially nondeductible, the deductible portion must be allowed. In determining the portion of such costs which is allowable as a deduction, a reasonable allocation must be made based upon available information.

Sec. 21. NAC 362.085 is hereby amended to read as follows:

362.085 ~~The~~ *If a taxpayer fails to file the statement required by NRS 362.110, the*

Department shall impose a penalty pursuant to NRS 362.230 in the following amounts:

1. ~~Net~~ *For net* proceeds or royalties not exceeding \$5,000, the penalty is *10 percent of the net proceeds or royalties or \$100* ~~is~~, *whichever is less.*

2. ~~Net~~ *For net* proceeds or royalties *greater than \$5,000 but* not exceeding \$10,000, the penalty is \$500.

3. ~~Net~~ *For net* proceeds or royalties *greater than \$10,000 but* not exceeding \$50,000, the penalty is \$1,000.

4. ~~[Net]~~ *For net* proceeds or royalties *greater than \$50,000 but* not exceeding \$100,000, the penalty is \$2,500.

5. ~~[Net]~~ *For net* proceeds or royalties of more than \$100,000, the penalty is \$5,000.

Sec. 22. NAC 362.080 is hereby repealed.

TEXT OF REPEALED SECTION

362.080 Waiver or reduction of penalty or interest of tax on net proceeds of minerals.

1. The Nevada Tax Commission may waive or reduce the penalty or interest imposed on a delinquent payment of the tax on the net proceeds of minerals which was imposed pursuant to NRS 362.160 if it finds that the proximate cause of the delinquent payment was:

(a) Circumstances completely beyond the control of the taxpayer who was required to make the payment, or the agent of the taxpayer;

(b) Justifiable neglect or justifiable inadvertence, and that the taxpayer making the payment has no history of habitually delinquent payments; or

(c) Other good cause shown.

2. Any application for the waiver or reduction of the penalty or interest on a delinquent payment of the tax on the net proceeds of minerals must be filed in writing with the Commission within 30 days after the tax became due. The application must include a statement of the circumstances which caused the delinquent payment.

3. In determining whether the circumstances which caused the delinquent payment in any particular case were completely beyond the control of the taxpayer required to make the payment, the Commission will consider only evidence which shows that the delinquent payment was proximately caused by fire, earthquake, flood or other act of God, theft or a similar cause not directly related to the actions of the taxpayer who was required to make the payment, whether intentional or not.

4. If the Commission finds that a delinquent payment was caused by circumstances completely beyond the control of the taxpayer required to make the payment, or the agent of the taxpayer, and that the tax was paid as soon as reasonably possible thereafter, the penalty and interest imposed for the delinquent payment will be waived.

5. If the Commission finds that the cause of the delinquent payment of taxes was justifiable neglect or justifiable inadvertence, that the taxpayer making the delinquent payment has not made more than one other delinquent payment in the immediately preceding 24 months, and that the payment was made as soon as reasonably possible thereafter:

(a) The penalty for the delinquent payment will:

- (1) Be reduced to 2 percent if the payment is not more than 2 days late;
- (2) Be reduced to 4 percent if the payment is more than 2 but not more than 5 days late;
- (3) Be reduced to 6 percent if the payment is more than 5 but not more than 10 days late;
- (4) Be reduced to 8 percent if the payment is more than 10 but not more than 15 days late;

or

- (5) Not be reduced if the payment is more than 15 days late.

(b) The interest on the delinquent payment will be reduced by an amount equal to the rate of reduction of the penalty applied by the Commission pursuant to paragraph (a).

(c) The penalty and interest will be waived if the total penalty and interest after reduction pursuant to this subsection is \$5 or less.

6. In determining whether the proximate cause of the delinquent payment was for other good cause shown, the Commission will require the taxpayer to submit, without limitation, evidence that:

(a) The assessment of penalties and interest constitutes an extreme financial hardship;

(b) The assessment of interest and penalties is equal to or greater than two-thirds of the amount of the tax which is due; or

(c) The assessment of penalties and interest is extremely unfair or extremely inequitable under the circumstances.

7. The Department shall provide the Commission with its recommendation concerning the waiver or reduction of penalties and interest after a review of all of the evidence that has been received from the taxpayer.

8. As used in this section, “extreme financial hardship” means that the taxpayer who owes the tax has the present ability to pay the tax but payment of the penalties and interest will render the taxpayer insolvent.