

LCB File No. R179-08

PROPOSED REGULATION OF THE COMMISSION ON ECONOMIC DEVELOPMENT

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

AUTHORITY: §1, NRS 360.750(9)(b).

A REGULATION relating to economic development; establishing and clarifying definitions of terms used in the abatement of taxes on new or expanded businesses; updating statutory and regulatory references; repealing regulations governing LEED abatements; and providing other matters properly relating thereto.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 1 through 5, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 24 , inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 24, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Taxable event” means that point in time when eligible machinery has both situs in Nevada and the person, either real or corporate, has accrued the risk of loss of the equipment.*

Sec. 4. *“Employment” means all Full Time Equivalent real persons listed on the books of the Federal Employee Identification Number of the applicant and any Full Time Equivalent real person whose labor is used by the applicant in its course of business and that is provided to the applicant through an employee leasing company as defined in NRS 616B.670. This does not include labor obtained from a business or individual that provides temporary, transient laborers to businesses as a service.*

Sec. 5. *1. For the purposes of NRS 360.225, to determine eligibility for a partial abatement of the taxes imposed pursuant to chapters 361, 363.B, and 374 of NRS, a proposed or expanded business which qualifies as an employer pursuant to NRS 612.055 shall be deemed by the Department to have begun operations in this State:*

(a) If the business is a proposed business, on the date on which the business first pays wages to an employee of the business who performs services for the business in this State; or on the date on which the business receives a Certificate of Occupancy from the authority that usually issues such certificates, whichever is later.

(b) If the business is an expanded business, on the date on which the business first pays wages to an employee of the business who was not employed by the business before the expansion; or if the expansion includes an increase in size of the physical facility being used by the business before an application for tax abatements under NRS 360.750 is submitted to the Nevada Commission on Economic Development, on the date on which the business receives a Certificate of Occupancy from the authority that usually issues such certificates, whichever is later.

Sec. 6. NAC 360.466 is hereby amended to read as follows:

NAC 360.466 Definitions. (NRS 360.750) As used in NAC 360.466 to 360.4775, inclusive, unless the context otherwise requires, the words and terms defined in NAC 360.468, 360.469, ~~and~~ 360.470, **360.471 and 360.472** have the meanings ascribed to them in those sections.

Sec. 7. NAC 360.468 is hereby amended to read as follows:

NAC 360.470 “Partial abatement” defined. (NRS 360.750) “Partial abatement” means the reduction of a portion of the taxes imposed pursuant to chapter 361, ~~364A~~ **363B** or 374 of NRS, or any combination thereof, which is authorized by NRS 360.750.

Sec. 8 NAC 360.472 is hereby amended to read as follows:

NAC 360.472 Application: Date of submittal; consideration by Commission; certificate of eligibility upon approval. (NRS 360.750, ~~361.0685~~ 361.0687, ~~364A.170~~**363B.120**, 374.357; **701A.210, 701A.220, 701A.230**)

1. To apply for a partial abatement, a person must submit an application to the Commission on a form prescribed by the ~~Commission~~**Executive Director** within the period prescribed in subsection 2.

2. If the application is for a partial abatement of the taxes imposed pursuant to chapter 361 or ~~364A~~**363B** of NRS, the application must be submitted not earlier than 18 months before the

business is located or expanded in this State. If the application is for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the application must be ~~submitted~~, *received in the offices of the Commission* not later than 60 days after the date of acquisition of the eligible machinery or equipment.

3. Except as otherwise provided in subsection 4, the Commission will consider an application submitted pursuant to subsection 1 if the application is received:

(a) At least 15 working days before a regularly scheduled meeting of the Commission, at that meeting; or

(b) Less than 15 working days before a regularly scheduled meeting of the Commission, at the next regularly scheduled meeting immediately following that meeting.

4. If the Commission determines that an application submitted pursuant to subsection 1 requires special or additional review and consideration by the Commission, the Commission may postpone consideration of the application until the next regularly scheduled meeting of the Commission.

5. If the Commission approves an application for a partial abatement, the Commission will forward to the Department, with the certificate of eligibility required pursuant to subsection 5 of NRS 360.750, any materials submitted to the Commission in support of the application submitted pursuant to subsection 1.

Sec. 9. NAC 360.474 is hereby amended to read as follows:

NAC 360.474 Factors considered by Commission. (NRS 360.750, ~~361.0685~~*701A.210, 701A.220, 701A.230*, 361.0687, ~~364A.170~~*363B.120*, 374.357)

1. The Commission will consider an application for a partial abatement if the goals of the applicant are consistent with the goals of the Commission concerning industrial development and diversification. The goals of the Commission include, without limitation:

(a) Diversification from the industries of gaming and hospitality;

(b) The attraction of basic industries to this State, including, without limitation, manufacturing, warehousing and distribution;

(c) The attraction to this State of business facilities and services, including, without limitation, corporate headquarters, facilities for research and development, and facilities for services such as technical assistance with products of the business or credit services; and

(d) The expansion of existing businesses and industries that are consistent with the goals described in paragraphs (a), (b) and (c).

2. Before the Commission approves an application for a partial abatement, the Commission will consider whether the applicant:

(a) Complies with the requirements set forth in NRS 360.750;

(b) Commits to continue in operation in this State for:

(1) At least 5 years; or

(2) The period specified in the agreement executed by the applicant with the Commission pursuant to paragraph (b) of subsection 2 of NRS 360.750,

whichever is later, after the date on which the applicant initially pays taxes to the Department or the county treasurer, as applicable, after the partial abatement has been approved by the Commission;

(c) Offers primary jobs; and

(d) If the application concerns a partial abatement of the taxes imposed pursuant to chapter ~~364A~~**363B** or 374 of NRS, registers with the Department on a form provided by the Department.

3. As used in this section, “primary job” means a position of employment offered by an applicant for a partial abatement, the compensation for which *at least fifty percent (50%)* is obtained from revenue that is generated outside the economic region in which the business is located.

Sec. 10. NAC 360.4743 is hereby amended to read as follows:

NAC 360.4743 Property tax: Percentage, duration and commencement of abatement; certificate of eligibility. (NRS 360.750, ~~361.0685~~**701A.210, 701A.220, 701A.230**, 361.0687)

1. Except as otherwise provided in NRS ~~361.0685~~**701A.210, 701A.220, 701A.230** or 361.0687, the Commission may not approve a partial abatement pursuant to NRS ~~361.0685~~**701A.210, 701A.220, 701A.230** or 361.0687:

(a) Of greater percentage of the taxes on real and personal property payable by the business each year pursuant to chapter 361 of NRS than the lesser of:

(1) Fifty percent; or

(2) A percentage agreed upon in writing by the business receiving the partial abatement and the ~~[governing body of the local government]~~*County Commission* whose tax revenue will be affected by the partial abatement; or

(b) Of longer duration than the shorter of:

(1) Ten years; or

(2) A duration agreed upon in writing by the business receiving the partial abatement and the ~~[governing body of the local government]~~*County Commission* whose tax revenue will be affected by the partial abatement.

2. If the Commission grants a partial abatement pursuant to NRS ~~[361.0685]~~*701A.210, 701A.220, 701A.230* or 361.0687 during the period beginning on:

(a) January 1 and ending on June ~~[30]~~*15* of the same year, the partial abatement begins to apply on the later of:

(1) July 1 of the same year; or

(2) A date agreed upon in writing by the business receiving the partial abatement and the ~~[governing body of the local government]~~*County Commission* whose tax revenue will be affected by the partial abatement; or

(b) ~~[July 1]~~*June 15* and ending on December 31 of the same year, the partial abatement begins to apply on the later of:

(1) ~~[The date on which the Commission grants the partial abatement]~~*July 1 of the following year*; or

(2) A date agreed upon in writing by the business receiving the partial abatement and the ~~[governing body of the local government]~~*County Commission* whose tax revenue will be affected by the partial abatement.

3. If the Commission grants a partial abatement pursuant to NRS ~~[361.0685]~~*701A.210, 701A.220, 701A.230* or 361.0687, the Commission will immediately forward a certificate of eligibility for the partial abatement that states the percentage and duration of the partial abatement to the county assessor of each county in which real or personal property used in connection with the business will be located.

Sec. 11. NAC 360.4745 is hereby amended to read as follows:

NAC 360.4745 Modified Business tax: Applicability of partial abatement. (NRS 360.750, ~~[364A.170]~~**363B.120**) A partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~**363B** of NRS that is approved by the Commission for an expanded business:

1. Applies only to the taxes due for the additional employees employed by the business as a result of the expansion of the business.
2. Does not apply to the taxes due for the employees that were employed by the business before the expansion.

Sec. 12. NAC 360.475 is hereby amended to read as follows:

NAC 360.475 Modified Business tax: ~~[Date of eligibility]~~; determination of amount of capital investment required; filing of form of compliance with proof of capital investment. (NRS 360.750, ~~[364A.170]~~**363B.120**)

~~[1. For the purposes of NRS 360.225, to determine eligibility for a partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~**363B** of NRS, a proposed or expanded business which qualifies as an employer pursuant to NRS 612.055 shall be deemed by the Department to have begun operations in this State:~~

~~—(a) If the business is a proposed business, on the date on which the business first pays wages to an employee of the business who performs services for the business in this State;~~

~~—(b) If the business is an expanded business, on the date on which the business first pays wages to an employee of the business who was not employed by the business before the expansion~~

~~—2.]~~ **1.** To determine the amount of capital investment required pursuant to paragraph (d), (e) or (f) of subsection 2 of NRS 360.750 for a partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~**363B** of NRS:

(a) A capital investment shall be deemed to be any expenditure for an asset that qualifies as “section 1245 property,” as defined in 26 U.S.C. § 1245, *and any direct investment in real property of any kind*, if the asset will be used by the proposed business to establish its operations in this State or by the expanded business to expand its operations in this State; and

(b) The amount paid for such an asset, including any capitalized interest, shall be deemed to be the amount of the capital investment for that asset. Any finance charge, tax or interest paid for

the asset must not be included in the determination of the amount of the capital investment for that asset.

~~312.~~ A business for which the Commission has approved a partial abatement of the taxes imposed pursuant to chapter ~~364A~~**363.B** of NRS shall, not later than 30 days after the end of the first fourth quarter in which the business has been in operation after the approval of the partial abatement, file with the Department on a form prescribed by the Department, a statement that the business has complied with the requirements *specified in the agreement executed by the applicant with the Commission pursuant to* ~~to~~ NRS 360.750. The form must be accompanied by proof that the business has made the capital investment *specified in the agreement executed by the applicant with the Commission* ~~required by the Commission~~ pursuant to NRS 360.750.

Sec. 13. NAC 360.4755 is hereby amended to read as follows:

NAC 360.4755 Local school support tax: Determination of eligibility of machinery or equipment. (NRS 360.750, 374.357)

1. The Department shall, pursuant to NRS 360.225, determine if machinery or equipment for which a business claims a partial abatement of the taxes imposed pursuant to chapter 374 of NRS qualifies as eligible machinery or equipment pursuant to NRS 374.357.

2. The Department shall ~~not~~ determine that machinery or equipment which is leased by a business qualifies for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS *for no more than 2 years during which the machinery or equipment is being leased.*

Sec. 14. NAC 360.468 is hereby amended to read as follows:

NAC 360.476 Local school support tax: Date of eligibility of machinery or equipment.

(NRS 360.750, 374.357) If an application is approved by the Commission for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the period of abatement begins on the date on which the applicant takes possession of the first delivery of eligible machinery or equipment at the location designated in the certificate of eligibility issued by the Commission *that creates a taxable event per Section 3 of these regulations.* ~~Upon taking possession of~~ *When the taxable event occurs on* such eligible machinery or equipment, the applicant shall immediately notify the Commission and the Nevada Tax Commission.

Sec. 15. NAC 360.4765 is hereby amended to read as follows:

NAC 360.4765 Minimum period of employment of required number of employees. (NRS 360.750, ~~[364A.170]~~**363B.120**, 374.357) If the Commission approves an application for a partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~**363B** or 374 of NRS, the applicant must employ the number of employees ~~[required by the Commission for approval of the application]~~ *specified in the agreement executed by the applicant with the Commission* by the last day of the first fourth quarter that the applicant has been in operation after the partial abatement has been approved by the Commission and must continue to employ at least that number of employees for:

1. At least 5 years; or
2. The period specified in the agreement executed by the applicant with the Commission pursuant to paragraph (b) of subsection 2 of NRS 360.750,
whichever is later, after the last day of that fourth quarter.

Sec. 16. NAC 360.477 is hereby amended to read as follows:

NAC 360.477 Refund upon approval of application. (NRS 360.750, ~~[364A.170]~~**363B.120**, 374.357)

1. If the Commission approves an application for a partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~**363B** of NRS, the applicant is eligible for a refund of any taxes imposed pursuant to chapter ~~[364A.170]~~**363B.120** of NRS which were paid previously by the applicant and which are subject to the abatement.

2. If the Commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the applicant is eligible for a refund of any taxes imposed pursuant to chapter 374 of NRS which were paid previously by the applicant and which are subject to the abatement, if the Department determines pursuant to NAC 360.4755 that the machinery or equipment qualifies as eligible machinery or equipment and:

(a) If the machinery or equipment was acquired outside this State from a retailer that is not registered with the Nevada Tax Commission, the application for the partial abatement was made:

- (1) Before the acquisition of the machinery or equipment; or
- (2) After the acquisition of the machinery or equipment and within 60 days after the date on which the taxes on the acquisition imposed pursuant to chapter 374 of NRS were due; or

(b) If the machinery or equipment was acquired from a retailer that is registered with the Nevada Tax Commission, the application for the partial abatement was made within 60 days after the payment of the taxes on the acquisition imposed pursuant to chapter 374 of NRS.

Sec. 17. NAC 360.4775 is hereby amended to read as follows:

NAC 360.4775 Determination of tax owed upon failure to continue to meet requirements; appeal. (NRS 360.750, ~~[364A.170]~~**363B.120**, 374.357)

1. If the Department finds that a business for which the Commission has approved an application for a partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~**363B** or 374 of NRS has failed to continue to meet the requirements for the partial abatement *specified in the agreement executed by the applicant with* ~~[imposed by]~~ the Commission pursuant to NRS 360.750, the Department shall determine the amount of tax owed to the Department in the manner prescribed in NRS 360.300 to 360.400, inclusive.

2. A business against whom the Department has made such a determination may, in the manner prescribed in NRS 360.300 to 360.400, inclusive, file an appeal with the Nevada Tax Commission for a determination whether the business has substantially complied with the requirements for the partial abatement approved by the Commission pursuant to NRS 360.750.

Sec. 18. NAC 361.617 is hereby repealed.

~~[— NAC 361.617 Definitions. (NRS 361.0775) As used in NAC 361.617 to 361.620, inclusive, unless the context otherwise requires, the words and terms defined in NAC 361.6175, 361.618 and 361.6185 have the meanings ascribed to them in those sections.]~~

Sec. 19. NAC 361.6175 is hereby repealed.

~~[NAC 361.6175 “Commission” defined. (NRS 361.0775) “Commission” means the Commission on Economic Development.]~~

Sec. 20. NAC 361.618 is hereby repealed.

~~[NAC 361.618 “LEED” defined. (NRS 361.0775) “LEED” means Leadership in Energy and Environmental Design.]~~

Sec. 21. NAC 361.6185 is hereby repealed.

~~[NAC 361.6185 “LEED Green Building Rating System” defined; availability of copies. (NRS 361.0775)]~~

~~—1. “LEED Green Building Rating System” means those portions of the Leadership in Energy and Environmental Design Green Building Rating System developed by the U.S. Green Building Council that are adopted by the Director of the Office of Energy or otherwise deemed to be appropriate for use in this State pursuant to NRS 701.217 and the regulations adopted pursuant thereto.~~

~~—2. A copy of the LEED Green Building Rating System may be obtained at no cost from the U.S. Green Building Council, 1015 18th Street, N.W., Suite 508, Washington, D.C. 20036, or on the Internet at <http://www.usgbc.org/>.~~

Sec. 22. NAC 361.617 is hereby repealed.

~~[NAC 361.619 Application to Commission; ineligible structures. (NRS 361.0775)~~

~~—1. A person may apply to the Commission for a partial abatement of the taxes on real property payable each year pursuant to chapter 361 of NRS for property which has a building or other structure that:~~

~~—(a) Is not a public building or structure; and~~

~~—(b) Is not a single family house, multifamily structure with three stories or fewer above grade, or a mobile or manufactured home.~~

~~—2. The application must be made on a form prescribed by the Executive Director of the Commission.~~

~~—3. The application:~~

~~—(a) Must include a letter of verification from the Director of the Office of Energy which states that the real property for which the abatement is sought has a building or other structure that meets or exceeds the certification requirements for the abatement as set forth in NRS 361.0775 and NAC 361.620 and which sets forth the number of LEED points earned;~~

~~—(b) Must specify the desired term and amount of the abatement in accordance with the table set forth in NAC 361.620; and~~

~~—(c) If the real property for which the abatement is sought is located in a redevelopment area created pursuant to chapter 279 of NRS, must include proof that the application has been submitted to the redevelopment agency or legislative body with jurisdiction over the redevelopment area.]~~

Sec. 23. NAC 361.6195 is hereby repealed.

~~[NAC 361.6195 Consideration of application at meeting of Commission; notice of meeting.
(NRS 361.0775)]~~

~~—1. The Commission will consider an application for the partial abatement of property taxes:~~

~~—(a) At the next regularly scheduled meeting of the Commission following receipt of the application if the application is received by the Commission at least 15 working days before the meeting; or~~

~~—(b) At the next regularly scheduled meeting of the Commission following the meeting described in paragraph (a) in all other cases.~~

~~—2. The Commission will, not less than 10 working days before a meeting at which it will consider an application for the partial abatement of property taxes, provide written notice of the date, time and location of the meeting to each local government and redevelopment agency within whose jurisdiction the real property that is the subject of the application is located.]~~

Sec. 24. NAC 361.620 is hereby repealed.

~~[NAC 361.620 Grant of abatement by Commission. (NRS 361.0775)]~~

~~—1. Except as otherwise provided in subsection 2, if the Commission determines that the application satisfies all requirements of NAC 361.617 to 361.620, inclusive, the Commission will grant a partial abatement of the taxes on real property payable each year pursuant to chapter 361 of NRS in accordance with the following table:~~

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LEED Level	LEED NC Points	LEED EB Points	Term of Abatement	Amount of Abatement
Silver	33 to 36	40 to 45	10 years	35 to 42 percent
-	-	-	5 to 7 years	50 percent
-	37 or 38	46 or 47	10 years	43 to 48 percent
-	-	-	8 or 9 years	50 percent
Gold	39 or more	48 or more	10 years	49 or 50 percent

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~~—2. The Commission will reduce the partial abatement of real property taxes authorized by subsection 1 to the extent necessary to ensure that:~~

~~—(a) If the real property for which the partial abatement is sought is located in a redevelopment area created pursuant to chapter 279 of NRS, the partial abatement authorized by subsection 1 together with any partial abatement of taxes to which the owner of the property is entitled pursuant to NRS 361.4722, 361.4723 or 361.4724 does not exceed 82 percent of the assessed value of the property; and~~

~~—(b) The partial abatement authorized by subsection 1 does not result in the inability of a local government to pay debt service on any obligation or of a redevelopment agency created pursuant to chapter 279 of NRS to pay any outstanding indebtedness.~~

~~—3. If the Commission grants a partial abatement of real property taxes, the abatement applies beginning July 1 of the next following fiscal year, unless the applicant and the governing body of the local government whose tax revenue will be affected by the abatement agree upon a different date and the governing body provides written authorization for the different date.~~

~~—4. Upon granting a partial abatement of real property taxes, the Commission will issue a certificate of eligibility for the abatement that sets forth all parcel numbers of the affected property and the percentage of the taxes on real property payable each year pursuant to chapter 361 of NRS and duration for which the abatement is granted.~~

~~—5. As used in this section, unless the context otherwise requires:~~

~~—(a) “LEED EB” means the LEED Green Building Rating System for Existing Buildings, Upgrades, Operations and Maintenance; and~~

~~—(b) “LEED NC” means the LEED Green Building Rating System for New Construction & Major Renovations.]~~