

LCB File No. R203-08

PROPOSED REGULATION OF THE NEVADA TAX COMMISSION

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

AUTHORITY: NRS 360.090, 372.380, 374.385, 372.510, 374.515, 372.725

A Regulation Amending NAC 372.825 and 372.826 on Security and Security Waivers

Section 1: NAC **372.825** is hereby amended to read as follows:

1. Except as otherwise provided in subsection 3 and NRS 377B.210, a person who obtains a permit to collect sales tax after July 1, 1985, shall deposit with the department, security in an amount equal to twice the estimated average tax due quarterly, or three times the estimated average tax due monthly if he files monthly returns, *or four times the estimated annual amount if filing annual returns* ~~[but not less than \$100]~~ *but not less than the minimum average taxable sales of \$500.00.*

2. Any person holding a permit in good standing on July 1, 1985, who becomes delinquent or files a late return or whose check tendered as payment is dishonored or *who files a return without any tax payment* shall deposit additional security with the department pursuant to subsection 1.

3. ~~[Unless habitually delinquent, an organization which obtains a permit to collect sales tax will not be required to deposit with the department the security required by subsection 1 if the department determines that it is entitled to the exemption from tax on its purchases of tangible personal property pursuant to NRS 372.326.]~~ The department shall require ~~[such an organization]~~ *any person* ~~[which]~~ *who* is habitually delinquent to deposit with the department security in an amount equal to three times the average actual tax due quarterly if the organization files its returns quarterly, ~~[or]~~ five times the average actual tax due monthly if the organization files its returns for monthly periods, *or seven times the actual tax due for yearly filers.*

4. *A habitual delinquent account, as defined in NAC 372.826, reporting on a quarterly schedule, will automatically be placed on a monthly reporting schedule.*

5. *On accounts with quarterly and monthly filing requirements the Department may re-examine and adjust the security requirements after a business has operated for a period of*

months, but no more than twelve months, to determine if the original estimated amount of tax due is shown to be inaccurate.

Where applicants have knowingly made false statements relating to sales volume to minimize the amount of security, the amount of security may be increased, pursuant to subsection 1, based on the actual monthly or quarterly, or yearly tax due.

6. If a period of twelve months has passed, the Department may not demand a further increase in the security deposit based solely on business volume. Only habitually delinquent accounts will be increased in accordance with subsection 3.

7. The Department may re-examine after 12 months and adjust the security requirement and filing requirement of accounts with an annual filing requirement to determine if taxable sales of the taxpayer exceed a total amount of \$1,500 for the 12 month reporting and payment period.

~~[3.]~~8. The department will accept as security pursuant to this section only:

(a) Cash.

~~[(b)]~~ Time certificates or certificates of deposit that are issued or confirmed by a bank, savings bank or savings and loan association situated in this state.

~~[(e)]~~(b) Passbook savings accounts located in a bank, savings bank or savings and loan association situated in this state.

~~[(d)]~~(c) Surety bonds executed by an insurance company.

~~[(e)]~~(d) Bearer bonds of the United States, except savings bonds.

~~[(f)]~~(e) Liens upon real property created by a recorded instrument vesting the lien in the State of Nevada.

~~[(g)]~~(f) Irrevocable letters of credit which are issued or confirmed by a bank, savings bank or savings and loan association situated in the State of Nevada upon the conditions prescribed by the department.

9. A waiver of the required security may be granted by the Tax Commission when:

(a) Non-corporate taxpayers maintaining a required payment record for a period of three years. A required payment record is defined as no more than one delinquency, late return, (regardless of reason) returned check, or return filed without payment for 36 consecutive months.

(b) Corporate taxpayers with a required payment record as defined in subsection 8 may substitute a personal surety of at least two principals for any other form of security deposit. Corporate taxpayers will be considered to include but not be limited to corporations, limited liability companies, limited partnerships including partnerships that consist of corporations, and trusts.

(c) Waivers will be granted only upon a written request of the taxpayer addressed to the director and approved by the commission.

(d) Any waiver granted will be subject to cancellation if the taxpayer becomes habitually delinquent.

(e) When a business changes its structure, such as sole proprietorship or partnership incorporating, or one corporation to another corporation, but the principals or officers remain virtually intact, the Department will consider the reporting history of the previous account when determining whether new or additional security is required. Common sense and reasonable consideration is the key when determining security for a new account created due to an organizational or structural change.

Sec. 2. NAC 372.826 is hereby amended to read as follows:

As used in NRS 372.510 and NAC 372.825, the commission will interpret the term “habitually delinquent” to mean having two or more delinquencies, late payments, returned checks, *returns filed without any payment of the tax, or a combination thereof*, in the 12 consecutive months immediately preceding the date on which the department investigates the matter.