

Chapter 361 of NAC

ADOPTED TEMPORARY REGULATION OF THE  
NEVADA TAX COMMISSION

LCB File No. T009-16

(Filed with the Secretary of State on January 10, 2017)

Adopted 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 33, 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);*

*(c) Small unmanned aircraft systems qualifying as exempt recreational equipment pursuant to NRS 361.069(4)(a)(7).*

**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 1, 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.** *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.*

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

**LCB FILE T009-16**

**Tax Situs and Taxable Value Allocation for Locally-Assessed Aircraft**

The following statement is submitted for temporary amendments, additions and deletions, to Nevada Administrative Code (NAC) 361 adopted by the Nevada Tax Commission.

**1. The Need for and Purpose of the Temporary Regulation.**

The need and purpose of the adopted temporary regulation, **LCB File No. T009-16**, is to provide necessary guidance to assessors for the determination of the taxable situs of aircraft. In the event that an aircraft has more than one taxable situs, the temporary regulation provides a standardized formula for the allocation of value between Nevada and other locations.

**2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

The Department of Taxation (Department), as staff to the Nevada Tax Commission (“NTC”) solicited comment from the public by sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop/Hearing</u>	<u>Number Notified</u>	<u>Representing Businesses</u>
10-3-2016	Workshop	10-21-2016	321	91
10-17-2016	Workshop	11-01-2016	200	98
11-4-2016	Hearing	12-05-2016	256	119

The mailing list included the interested parties list maintained by the Department, as well as officials of local governments. These documents were also made available on the website of the Department of Taxation, [www.tax.nv.gov](http://www.tax.nv.gov), the legislative website at [www.leg.state.nv.us](http://www.leg.state.nv.us) and the Department of Administration website at <https://notice.nv.gov/>. These documents were also posted at the location listed in Exhibit A, attached.

Comments were received from numerous taxpayers, organizations representing hobbyist drone owners, and local governments during the workshop and adoption hearing.

The comments included requests to remove unmanned aircraft systems (UAS) owned by hobbyists from being subject to these regulations. Others desired commercial UAS to not be taxed.

A copy of the audio taped comments or the record of proceedings or minutes of the workshops may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Nevada Department of Taxation, 1550 College Parkway, Carson City, Nevada 89706, or by e-mailing the Nevada Department of Taxation at [CSpurlock@tax.state.nv.us](mailto:CSpurlock@tax.state.nv.us).

**3. The number of persons who:**

**(a) Attended and testified at each workshop:**

<b><u>Date of Workshop</u></b>	<b><u>Attended</u></b>	<b><u>Testified</u></b>
10-21-2016	26	5
11-01-2016	37	9

**(b) Attended and testified at each hearing:**

<b><u>Date of Hearing</u></b>	<b><u>Attended</u></b>	<b><u>Testified</u></b>
12-05-2016	78	10

**(c) Submitted to the agency written comments:**

<b><u>Date of Workshop / Hearing</u></b>	<b><u>Number Received</u></b>
10-21-2016	7
11-01-2016	2

**4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit B.**

**5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation describing how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. One business taxpayer requested Section 33 concerning fractionally-owned aircraft be withdrawn for further consideration and workshops. Two business taxpayers requested the regulation be restructured to reflect the status quo for calculating the allocation of taxable value when two or more taxable locations exist, rather than adopting the domicile model used in California and Texas, among other states. Other commenters wanted a business friendly tax system. The summary may be obtained as instructed in the response to question #2.

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The temporary regulation was adopted with changes reflecting the verbal and written comments made during the workshops and adoption hearing listed above. The NTC adopted the temporary regulation as revised in the workshop and adoption hearing; and believed no changes other than those made were necessary.

7. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**
  - (a) **Both adverse and beneficial effects; and**
  - (b) **Both immediate and long-term effects.**

***Adverse and Beneficial Effects***

The 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 in Nevada is divided by the total number of overnights. The resulting ratio is applied to the total taxable value and is deemed to represent the taxable situs in Nevada. This formula represents the current method of allocation used by county assessors.

***Immediate and Long-Term Effects***

The immediate and long-term effects will be to reduce the number of appeals before the State Board of Equalization regarding the appropriate method of establishing taxable situs and the amount of taxable value to be allocated to Nevada if more than one tax situs exists. The long-term effect will be more consistent administration of the allocation of taxable value among the various counties.

8. **The estimated cost to the agency for enforcement of the adopted regulation.**

The Department does not anticipate any cost to the agency for enforcement.

- 9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the adopted regulations duplicate.

- 10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

The Nevada Tax Commission is not aware of any provision in this regulation which is also governed by federal regulation with the exception of the Service Members Civil Relief Act which dictates that the personal property of active-duty service persons residing in Nevada upon military order do not acquire taxable situs unless Nevada is the home state of the active-duty service person or the property is used in a trade or business.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The regulation does not provide for a new fee, and does not increase an existing fee.

- 12. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restricted the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

Please see attached Small Business Impact Statement.

**Exhibit A**  
**List of Locations where Notices were posted:**

Department of Taxation  
1550 College Parkway  
Carson City, NV

Department of Taxation  
Grant Sawyer Building, Suite 1300  
555 E. Washington Avenue  
Las Vegas, NV

Department of Taxation  
4600 Kietzke Lane  
Building L, Suite 235  
Reno, NV

Department of Taxation  
2550 Paseo Verde Parkway, Suite 180  
Henderson, NV

Nevada Gaming Control Board  
1919 College Parkway  
Carson City, NV

Nevada Gaming Control Board  
Grant Sawyer State Office Building  
555 East Washington Avenue  
Las Vegas, NV

Legislative Counsel Bureau  
4041 South Carson Street  
Carson City, NV

Clark County Government Center  
500 South Grand Central Parkway  
Las Vegas, NV

Nevada State Library and Archives  
100 N. Stewart Street  
Carson City, NV

Nevada Attorney General's Office  
100 North Carson Street  
Carson City, NV

In addition, the notices were faxed to the following libraries for posting:

Amargosa Valley Library  
29 E. Farm Road  
Amargosa Valley, NV

Boulder City Library District  
701 Adams Blvd  
Boulder City, NV

Carson City Library  
900 N. Roop Street  
Carson City, NV 89701

Clark County Library  
1401 East Flamingo Road  
Las Vegas, NV

Churchill County Library  
553 South Maine Street  
Fallon, NV 89406

Douglas County Library  
1625 Library Lane  
Minden, NV

Elko County Library  
720 Court Street  
Elko, NV

Esmeralda County Library District  
Goldfield Public Library  
Corner of Crook and Fourth Street  
Goldfield, NV 89013-0430

Henderson District Public Libraries  
Paseo Verde Library  
280 S. Green Valley parkway  
Henderson, NV 89012

Humboldt County Library  
85 East Fifth Street  
Winnemucca, Nevada 89445

Lincoln County Library  
63 Main Street

Pioche, NV 89043-0330

Lyon County Library  
20 Nevin Way  
Yerington, NV

Lander County Library  
625 S. Broad St  
Battle Mountain NV 89820

Mineral County Library  
First & "A" Street  
Hawthorne, NV 89415

North Las Vegas Library  
2250 Las Vegas Blvd  
NLV, NV 89030

Pahrump Community Library  
701 East Street  
Pahrump, NV 89048

Pershing County Library  
1125 Central Avenue  
Lovelock, NV

Round Mountain Public Library  
73 Hadley Circle  
Round Mountain, NV

Storey County Library  
26 S. B St  
Virginia City, NV 89440

Tonopah Library District  
167 S Central St  
Tonopah, NV 89049

Washoe County Library  
4001 S. Virginia St.  
Reno NV

White Pine County Library  
950 Campton Street  
Ely, NV