

LCB File No. R019-05

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

(This proposed regulation was previously adopted as T023-04)

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

AUTHORITY: NRS 360.245, NRS 360.4193

Adding new sections to Chapter 360 of the Nevada Administrative Code as follows:

Compromises.

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

Sec. 2. *If the Commission determines that there are grounds for compromise under this regulation, the Commission may, in the Commission's discretion, compromise a person's liability for any tax, contribution or premium required to be paid to the State by that person in accordance with the provisions of chapter 360, 360B, 362, 363A, 363B, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS as administered or audited by the Department. The Commission may compromise a liability under this section only by the affirmative vote of a majority of its members.*

Sec. 3. 1. *The Commission may compromise a liability under section 2 when:*

(a) There is:

(1) Doubt as to the Department's ability to collect the full amount of the liability; or

(2) Doubt as to the existence or correct amount of the liability; and

(b) Considerations of equity and fairness weigh in favor of compromising the liability.

2. *For purposes of subsection 1:*

(a) Doubt as to the Department's ability to collect the full amount of the liability exists in any case where:

(1) A person's assets and income are less than the full amount of his liability;

(2) The person will not have in the foreseeable future the money, assets or means to pay his liability, either in full or by a payment plan; and

(3) No fewer than 5 years have passed since the liability became final.

(b) Doubt as to the existence or correct amount of the liability exists in any case where:

(1) The amount or existence of the liability is dependent upon the outcome of a good-faith dispute over the relevant facts or applicable law; and

(2) The liability has not become final pursuant to the order or judgment of a court of competent jurisdiction, or pursuant to a decision of the Commission that was not timely petitioned in accordance with NRS 233B.130.

(c) Considerations of equity and fairness may include, without limitation, any of the following:

(1) The person's medical condition, or that of a spouse, parent, sibling or child to whom he provided full-time medical care or living assistance, was such that the person was unable to manage his financial affairs during the period for which he incurred the liability.

(2) The person incurred the liability, in whole or in part, as the result of employee misconduct of which the person was unaware.

(3) Notwithstanding the conduct which gives rise to the liability for which a compromise is sought, the person, and any business entities that he has managed, operated or controlled, have a history of compliance with all applicable filing and payment requirements.

(4) The person was the victim of a crime, natural disaster or other unforeseeable occurrence that significantly impacted his ability to pay his financial obligations as they came due in the ordinary course of business.

(5) The person was the victim of a crime, natural disaster or other unforeseeable occurrence that significantly impacted his ability to timely challenge or petition the liability at the time when the liability was originally assessed by the Department.

3. In determining whether a person's assets and income are less than the full amount of his liability, the Commission will determine whether the person has the ability to pay the liability either in full or in reasonable installments. In determining the person's ability to pay, the Commission will make an allowance for the person to retain sufficient funds to pay basic living expenses. The determination of the amount of such basic living expenses will be founded upon an evaluation of the individual facts and circumstances presented by the person's case. To guide this determination, the Commission may consider guidelines utilized by the Internal Revenue Service on national and local living expense standards.

Sec. 4. 1. A person may request that the Commission compromise a liability under this regulation by submitting to the Department, on a form prescribed by the Department, an offer in compromise of the liability. The offer must include:

(a) A statement of the grounds upon which the compromise is sought, and any other information tending to support the offer.

(b) Copies of such financial information and documentation as may be required by the Department, including but not limited to financial statements, bank records, accounting ledgers, and a statement or explanation of any assets that may be acquired by virtue of a pending claim, cause of action, settlement, insurance disbursement, or inheritance, or any unsatisfied judgment or court order.

(c) An affirmation, signed under penalty of perjury, attesting to the truthfulness and accuracy of all supporting information and documentation submitted with the offer.

(d) Pending the Commission's acceptance or rejection of the offer, or pending the person's withdrawal of the offer pursuant to subsection 2, a written consent to suspend any and all statutory periods of limitations within which the Department would otherwise be required to take or bring an action to collect the liability, or to seize, attach, garnish, or levy execution upon any property or assets in satisfaction of the liability.

2. When the Department receives an offer submitted by a person pursuant to this section, the Department will review and analyze the offer, and may verify any supporting information and documentation that it deems to be material to the offer before presenting the offer to the Commission for acceptance or rejection. If the offer does not, in the Department's discretion, comply with subsection 1 or include adequate supporting information and documentation, the Department will return the offer with a written explanation of its deficiencies. If the contents of the offer and the supporting documentation clearly indicate, in the Department's discretion, that the offer should be rejected by the Commission, the Department will so advise the person in writing and afford him the opportunity to withdraw the offer before the Department presents it to the Commission. If the person declines to withdraw the offer, the Department will present it to the Commission for action at the Commission's next available meeting. In all cases where an offer in compromise is presented to the Commission, the Department will recommend a course of action to the Commission.

- 3. If a person submits an offer in compromise of a liability in compliance with this section, the Department will refrain from taking any action to collect the liability, or to seize, attach, garnish, or levy execution upon any property or assets in satisfaction of the liability, unless the Department determines, in the Department's discretion, that the person submitted the offer to delay or avoid collection of the liability.*
- 4. After reviewing an offer submitted by a person pursuant to this section, the Commission will issue a written decision to that person setting forth the Commission's findings with respect to the offer. The Commission may accept the offer, reject the offer, or make its acceptance of the offer contingent upon the satisfaction of such conditions precedent to acceptance as the Commission deems appropriate, including the condition that all or part of the amount stated in the offer be paid within a specified time frame. The Commission may permit any such amount to be paid in reasonable installments, and may make its acceptance of the offer further contingent upon the person's compliance with a specified schedule of payments. If the Commission makes its acceptance of an offer contingent upon the satisfaction of any conditions, the Commission will specify those conditions in its written decision.*
- 5. If, in accordance with subsection 4, the Commission makes its acceptance of a person's offer in compromise contingent upon the person's satisfaction of specified conditions, the Commission, before finally accepting or rejecting the offer, will hold a hearing for the purpose of determining whether the person has satisfied the conditions. If the Commission determines that the person has failed to satisfy the conditions, the Commission will issue a written decision detailing the manner by which the person has failed to satisfy the conditions. If the Commission determines that the person has satisfied the conditions, the Commission will issue a written decision acknowledging its acceptance of the person's offer in compromise.*
- 6. Once the Commission accepts an offer submitted by a person pursuant to this section, the person's tender of the full amount stated in the offer will be considered an accord and satisfaction as to the person's liability, and will thereby conclusively settle the liability unless the Commission later determines that the Commission's acceptance of the offer was procured through fraud, misrepresentation, concealment, or resulted from a mutual mistake of fact. Before making any such determination, the Commission will afford the person the opportunity to an evidentiary hearing noticed and conducted in accordance with the provisions of chapters 233B and 241 of NRS. If the Commission determines that its acceptance of the offer was*

procured through fraud, misrepresentation, concealment, or resulted from a mutual mistake of fact, the Commission may reinstate the liability in the amount originally assessed by the Department. A person aggrieved by a decision of the Commission to reinstate a liability in accordance with this subsection may petition the district court for judicial review of the decision in accordance with NRS 233B.130.

Sec. 5. *The Commission's acceptance of an offer in compromise shall in no way be construed as a limitation upon the Department's rights and remedies with respect to parties not named or identified in the offer in compromise.*