

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R012-07**

Effective October 31, 2007

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

AUTHORITY: §§1-12, NRS 360.090 and 362.120.

A REGULATION relating to taxation; setting forth the requirements for calculating the net proceeds and gross yield of a geothermal resource; requiring the Department of Taxation to consider certain costs, depreciation and allowances in assessing and taxing the net proceeds of a geothermal resource; 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 11, inclusive, of this regulation.

**Sec. 2.** *As used in NAC 362.015 and sections 2 to 11, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Field” means the area of operations from which a geothermal resource is extracted and transported before any further beneficiation of the geothermal resource occurs.*

**Sec. 4.** *“Mining function” means any activity relating to the extraction of a geothermal resource, including, but not limited to, any drilling, pumping, reinjection, roadwork or transportation of the geothermal resource, if the activity occurs before any further processing of the geothermal resource by a system for gathering the geothermal resource.*

**Sec. 5.** *“Plant” means any facility at which the processing of a geothermal resource occurs, including, without limitation, a plant for generating power.*

**Sec. 6.** *“Processing” means any activity that occurs beyond the inlet of a plant that:*

- 1. Changes the physical or chemical characteristics of the production stream of a geothermal resource; or*
- 2. Enhances the marketability of the production stream or the value of any separate component of the production stream.*

*↳ The term includes, without limitation, any beneficiation, compression, flashing, separation or stabilization that occurs within the plant, other than any reinjection, regulation of wellhead pressure, changing of pressures or temperatures in a reservoir or any other compression that occurs during the production of the geothermal resource.*

**Sec. 7.** *“Processing allowance” means any cost associated with converting a geothermal resource into any electricity, heat or other by-product. The term includes, without limitation, any cost associated with an activity occurring after the completion of all mining functions but before the processed product is transported to a market for the product.*

**Sec. 8.** *“Repowering” means to:*

- 1. Remove any inefficient, obsolete or aging equipment that is used in the production stream of a geothermal resource; and*
- 2. Replace that equipment with any new technology or equipment that increases or may increase the efficiency of the processing of the geothermal resource.*

**Sec. 9.** *“Transaction” means a bona fide transaction conducted at arms length involving a geothermal resource at the wellhead.*

**Sec. 10.** *“Transportation allowance” means any cost incurred for the movement of a geothermal resource that is converted to any electricity, heat or other by-product, if the*

*movement of the geothermal resource is performed by the operator and occurs after the geothermal resource is processed.*

**Sec. 11.** *The net proceeds of a geothermal resource must be calculated using the gross yield of the geothermal resource, as determined pursuant to NRS 362.120 and NAC 362.015, less the amount of any deduction that is available pursuant to NRS 362.120 and this chapter.*

**Sec. 12.** NAC 362.015 is hereby amended to read as follows:

362.015 1. ~~[As used in this section, “transaction” means a bona fide transaction conducted at arms length involving geothermal resources at the wellhead.~~

~~—2.]~~ To assess and tax the net proceeds of an operating ~~[mine]~~ *facility* which extracts geothermal resources, ~~[for a profit,]~~ the gross ~~[value]~~ *yield* of the geothermal resources must be determined pursuant to this section.

~~[3.—To determine the gross value of geothermal resources, the transaction must first be identified.~~

~~—4.]~~ 2. If the transaction involves the *direct, arms-length* sale of the geothermal resource, the gross ~~[value]~~ *yield* of the geothermal resource equals the proceeds of the sale ~~[~~

~~—5.] of the geothermal resource.~~

3. If the transaction involves the *indirect* sale of ~~[electricity,]~~ *the geothermal resource*, the gross ~~[value]~~ *yield* of the geothermal resource ~~[used to produce the electricity is determined by one of the following methods:~~

~~—(a) If the transaction consists of an agreement between the developer of the field and the developer of the generating plant, the gross value of the geothermal resource is the negotiated share of the gross value of the electrical energy sold less]~~ *is the total revenue received from the sale of any electricity, heat or other by-product of the geothermal resource that is agreed upon*

*by the parties to the sale, less any processing allowance or transportation allowance. If the selling price includes any costs for processing or transportation, the person extracting the geothermal resource shall report those costs on a form prescribed by the Department. The Department shall consider those costs in determining the gross yield of the geothermal resource.*

*4. In the case of an indirect sale of a geothermal resource that is used to produce electricity, all energy, capacity and other payments received, if any, must be included in the gross yield of the geothermal resource.*

*5. If the costs associated with the processing allowance or transportation allowance are included in a bona fide arms-length contract, the costs shall be deemed to be an appropriate deduction from the selling price. Such costs may include the negotiated costs for the operation, maintenance and replacement of the ~~[generating]~~ plant which are paid by the ~~[developer]~~ operator of the field ~~[plus]~~, reduced by any negotiated costs for the operation, maintenance and replacement of the field which are paid by the ~~[developer]~~ operator of the ~~[generating plant. These]~~ plant. The negotiated costs must be set forth in a written contract or other document specified by the Department and may include, but are not limited to:*

~~[(1)]~~ (a) A negotiated sharing by percentage of the operating and maintenance costs of the field and the ~~[generating plant.~~

~~—(2)] plant; or~~

(b) A negotiated agreement that the ~~[developer]~~ operator of the field will pay for necessary improvement to the ~~[generating plant.~~

~~—(b) If there is not a transaction establishing the value of the geothermal resource, the gross value of the geothermal resource is determined by deducting a transportation allowance and a generating allowance. For the purposes of this paragraph:~~

~~——(1) The transportation allowance is allowed if the developer of the field must install or pay, in part or in total, for a transmission line to deliver electricity to the utility, and includes:~~

~~——(I) plant.~~

*6. If the costs associated with the processing allowance or transportation allowance are not included in a bona fide arms-length contract, the Department must consider the following:*

*(a) The annual total cost of operating and maintaining the **plant**, transmission line **and any other facility or equipment used to transport the geothermal product after all mining functions and processing are complete**, including , **but not limited to, any reasonable and prudent costs incurred for** direct wages, benefits, **workers' compensation**, supplies, materials and charges for overhead **;***

~~——(II) , general liability insurance incurred because of the plant and transmission line and costs for obtaining and maintaining any permit for a site, permit relating to air quality or any other permit or license required to operate the plant or transmission line. The transportation allowance for a transmission line is allowed only in direct proportion to the relationship of the field operator's investment to the total cost of the transmission line.~~

*(b) Except as otherwise provided **by** in NAC 362.100 to 362.160, inclusive, the depreciation of the capital investment in the **plant and** transmission line using the straight-line method **;** and*

~~——(III) over the useful life of the asset established in accordance with the Personal Property Manual.~~

*(c) Any charges for wheeling electricity or for loss of power in the transmission line.*

*(d) Amortization of each long-term contract to purchase power using the straight-line method over the stated life of the contract. Any amount amortized pursuant to this paragraph must not exceed 60 percent of the original book value of the plant and transmission line.*

*(e) An allowance for return on the investment in the **plant and** transmission line, calculated by multiplying the ~~[undepreciated investment in]~~ **cost of acquiring the plant and** transmission line, *as recorded in the books and records of the operator*, by the overall rate of return on capital. ~~[which is authorized by the Public Utilities Commission of Nevada at the time of investment.~~*

~~➔ If a developer of a generating plant is involved in the transmission or sale of electricity, wheeling charges and losses of energy along the transmission line are legitimate deductions from the gross sales of electrical energy.~~

~~—— (2) The generating allowance is the cost of converting the geothermal resource into electricity and includes, but is not limited to:~~

~~—— (I) The annual total cost of operating and maintaining the generating plant including wages, benefits, repairs, supplies, materials and charges for overhead;~~

~~—— (II) Except as otherwise provided by NAC 362.100 to 362.160, inclusive, the depreciation of the capital investment in the generating plant using the straight-line method; and~~

~~—— (III) An allowance for return on the investment in the generating plant, calculated by multiplying the undepreciated investment in the generating plant by the overall rate of return on capital which is authorized by the Public Utilities Commission of Nevada at the time of investment.~~

~~→ To determine the generating allowance, the investment in the generating plant must generally include all facilities from production at the wellhead to the disposal of the spent brine.] The overall rate of return on capital must be based on the appropriate electric industry cost of capital study conducted by the Department pursuant to NAC 361.408 and 361.425.~~

*7. For the purpose of paragraph (e) of subsection 6:*

*(a) If an agreement for the purchase of power is in effect, the Department may grant an allowance for a return on the investment for a period that is equal to the remaining term of the agreement or 15 years, whichever is less. If such an agreement is not in effect, the Department may grant the allowance for a period that is equal to the remaining useful life of the plant and transmission line or 15 years, whichever is less.*

*(b) If the plant or transmission line is repowered or a reinvestment in the plant or transmission line occurs, the taxpayer may apply to the Department for an extension of the allowance specified in paragraph (a). The Department may grant an extension pursuant to this paragraph for a period that is equal to the remaining life of the assets purchased for the repowering or reinvestment or 15 years, whichever is less. The remaining life of those assets must reasonably reflect the useful life of those assets established in accordance with the Personal Property Manual.*

*(c) To calculate the allowance specified in paragraph (a), the Department may require the taxpayer to submit any additional information specified by the Department, including, without limitation:*

*(1) A statement setting forth the amount of any recapitalization or repowering of the plant or transmission line;*

*(2) A statement setting forth the established life of the assets purchased; or*

*(3) An audit of the books and records of the taxpayer.*

*(d) If the Department grants an extension pursuant to paragraph (b), the amount of the return on the investment must not exceed the amount of the recapitalization or repowering of the plant or transmission line.*

*8. As used in this section, "Personal Property Manual" has the meaning ascribed to it in NAC 361.1361.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R012-07**

The Nevada Tax Commission adopted regulations assigned LCB File No. R012-07 which pertain to chapter 362 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

The following statement is submitted for amendments, additions and deletions, to Nevada Administrative Code (NAC) Chapter 361 adopted by the Nevada Tax Commission, in order to implement revised and/or updated procedures for the valuation of geothermal net proceeds of minerals taxes.

**1. 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, as staff to the Nevada Tax Commission, 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</u>	<u>Number Notified</u>	<u>Representing Businesses</u>
9/4/07	Workshop	9/18/07	354	196
8/30/07	Hearing	10/1/07	354	196

The mailing list included the interested parties list maintained by the Department, as well as officials of local jurisdictions subject to these regulations.

Many oral and two written comments were received at the workshops and hearing. A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at **lheyman@tax.state.nv.us** .

The Legislative Counsel Bureau completed its review and revisions on September 17, 2007. The Tax Commission reviewed and adopted the regulation at the hearing on October 1, 2007. The permanent regulation was previously adopted as a temporary regulation by the Nevada Tax Commission on September 11, 2006 following 2 workshops held in 2006.

**2. The number persons who:**

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

<u>Date of Workshop</u>	<u>Attended</u>	<u>Testified</u>
9/18/07	33	11

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

<u>Date of Hearing</u>	<u>Commission/ Public Attended</u>	<u>Public Testified</u>
10/1/07	8 /33	3

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

<u>Date of Workshop / Hearing</u>	<u>Number Received</u>
September 18, 2007	0

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

Comments were solicited from affected and interested businesses and persons, by notices posted at the Nevada State Library; various Department of Taxation locations throughout the state; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct mail to assessors and the interested parties list maintained by the Department. Approximately 55% of the approximately 354 direct mail notices were sent to individuals or associations representing business.

Members of the Nevada Tax Commission, officials of the Nevada Department of Taxation, the Nevada Taxpayers Association, local government officials, and members of the general public commented on some or all of the proposed language changes during the workshop process and during the Adoption Hearing.

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

**4. 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 permanent regulation was adopted with changes reflecting the verbal and written comments submitted to, or received by, the Department of Taxation primarily from attorneys representing private industry, county assessors, treasurers, finance officers, and Tax Commission members during the workshop listed above. The Nevada Tax Commission adopted the permanent regulation as revised in workshops and at the adoption hearing; and believed no changes other than those made were necessary.

**5. 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.**

The Commission has found that the regulation does not impose a direct and significant burden upon businesses and the public in Nevada. The permanent regulation provides the administrative process for:

- 1.) Calculating the net proceeds of minerals tax for geothermal properties.

The regulations present no reasonably foreseeable or anticipated immediate or long-term negative economic effects to businesses. The regulation is designed to recognize certain revenue which should be part of the gross yield as well as certain deductions from the gross yield related to the production and transmission of electricity for an adjusted gross yield prior to deduction of actual costs associated with mining for an estimate of net proceeds. The immediate and long-term effects of the regulation are to provide a standardized method by which the valuation of geothermal net proceeds of minerals taxes may be administered.

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

The Department anticipates no additional cost for local governments to administer the regulation. The estimated cost to the Department will include costs associated with the collection of additional data from which an adjusted gross yield may be calculated. Those costs are not yet known.

**7. 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 proposed amendments duplicate.

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

The Commission is not aware of any provision in this regulation which is also governed by federal regulation.

**9. 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 Nevada Tax Commission is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.