LCB File No. R093-04

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, 360.250

General Provisions

Section 1. ***Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.***

Sec. 2. ***As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in section 3 of this regulation have the meanings ascribed to them in those sections.***

Sec. 3. ***Definitions (NRS 360.090, 360.250, 361.227)***

1. "Contract," or any variation thereof, means or refers to a lease, sublease, assignment, deed, conveyance, permit, authorization, agreement, contract or other instrument creating a possessory interest.

2. "Owner" means any natural person, association, partnership, corporation, governmental agency, public entity or quasi-public entity holding an interest in real or personal property which is for any reason exempt from taxation.

3. "Possession" means actual occupation requiring more than incidental benefit from the use of otherwise tax-exempt property.

4. "Possessor" means any natural person, association, partnership or corporation holding a possessory interest.

5. "Possessory interest" means any leasehold interest, possessory interest, or beneficial interest in, or beneficial use of, real or personal property, where such interest or use is taxable under the provisions of NRS 361.157 or NRS 361.159.

Definition and Nature of Taxable Possessory Interests

Sec. 4. ***Evidence of Exclusive Use.***

1. In evaluating whether property meets the criteria for exclusive use established under NRS 361.2275 for a taxable possessory interest, the county assessor must also consider evidence of exclusivity, such as, but not limited to:

(a) Sole occupancy or use of property or improvements;

(b) Use as a cotenant;

(c) Concurrent use by a possessor who has a primary or prevailing right to use property or improvements at any time;

(d) Concurrent uses by persons making qualitatively different uses of property or improvements;

(e) Concurrent use by persons engaged in similar uses that diminish the quantity or quality of the property or improvements; or

(f) Concurrent use that does not diminish the quantity or quality of the property or improvements, if the number of those concurrent use grants is restricted.

2. In no event shall the presence of occasional trespassers or occasional interfering uses be sufficient in and of itself to make nonexclusive a use, or a right or claim to a use, that is otherwise exclusive for purposes of these regulations.

Sec. 5. ***Evidence of durability.***

1. In evaluating whether a person has possession of, claim to or right to the possession of the property for a durable period pursuant to NRS 361.2275, the county assessor must also consider evidence of durability, such as but not limited to:

(a) Whether the duration of the period of use is of sufficient length for the possessor to realize a private benefit;

(b) In the event of seasonal use, whether:

(i) the possessor of the property uses it to substantially the same extent as would an owner engaged in the same activity; or

(ii) there is a history on the lien date of recurring use by the present or former possessors making similar use of the property; or

(iii) the possessor made a contribution to the value of the property by way of investment on or near the property occupied, even if actual possession is infrequent.

Sec. 6. ***Evidence of independent use.***

1. In evaluating whether an independent use of the property has been established pursuant to NRS 361.2275, the county assessor must also consider evidence of an independent use, such as, but not limited to:

(a) The possessor has the authority to manage or operate the property without the immediate, continuous, hands-on direction of the owner;

(b) The possessor has the authority to manage or operate the property in a manner advantageous and convenient in performing its contracts and maximizing its profits;

(c) The possessor is an independent contractor using otherwise exempt property pursuant to a services or other contract with the owner of such property;

(d) Interference by the owner is prohibited. Cases where the owner may interfere with some uses but not others must be considered on an individual basis.

(e) The limitations placed on the possessor's use of the property are of the type that an owner would place on himself, given the nature of the property.

Discovery and Listing of Taxable Possessory Interests

Sec. 7. ***Notification of Taxable Status***

1. The county assessor may request owners of real or personal property which is for any reason exempt from taxation to list all possessory interests of their property.

2. Any request at a minimum shall include the following information:

(a) Name, and contact information of the owner and the possessor of the interest in real or personal property;

(b) The legal description of any real property being used, or if the legal description is not available, a description of the general location of the property; and a general description of the types or classes of personal property being used;

(c) The nature of the instrument conveying the interest;

(d) The original date and duration of the agreement;

(e) The actual lease payment or payment for services in the agreement;

(f) The use of the property;

3. The county assessor may request from any possessor of otherwise exempt property a list of all persons, associations, partners, corporations or other entities which hold a possessory or beneficial use interest in any otherwise exempt real or personal property pursuant to sub-contracts with the possessor.

4. The county assessor may require a copy of the lease or agreement as necessary.

Sec. 8. *Evidence of possession.*

1. Regardless of the type of document evidencing the right to possession, a possessory interest exists whenever a possessor has an exclusive right to a beneficial use of otherwise tax-exempt real or personal property. In the event that only a verbal agreement has been made and no written document exists, a taxable possessory interest may still exist.

2. If documents do exist, they need not be denominated as leases. Documents including, but not limited to, agreements, permits, and contracts may indicate possession of real or personal property.

Determination of Taxable Value of Possessory Interests in Real and Personal Property

Sec. 9 *Taxable Valuation Methodology of Possessory Interests*

1. Taxable Value of Land.

(a) The assessor must determine and identify the land area necessary to, or included in, the operation or use of the taxable possessory interest.

(b) The value of the possessory interest in land may be estimated directly by one of the methods identified in NAC 361.118.

(c) In the event the conditions of NRS 361.227(3)(a) or (b) are present, the taxable value of land calculated pursuant to the limitations imposed by NRS 361.227, must be further adjusted by multiplying the percentage use and time factors against the taxable value.

1. For example, assume the taxable value of a vacant lot owned by the city is $35,000. The lot is 10,000 square feet, but only the front half is leased to XYZ company. The contract provides for a term of possession of seven months, from June 1st to January 1st. The possessory interest value in the land is $10,150 calculated as follows:

10,000 square feet /2 = 5,000 square feet used or leased.

5,000 square feet/10,000 square feet = .5, or 50% of the land is used or leased.

$35,000 x 50% = $17,500 value of property actually used or leased.

actual use = 7 months

7 months/12 months = .5833 or 58% of the time the land is actually used or leased.

$17,500 x 58% = $10,150 value of property accounting for time used or leased.

2. Taxable Value Of Improvements Or Personal Property.

(a) The taxable value of improvements or personal property must first be determined according to the requirements of NRS 361.227.

(b) In the event the conditions of NRS 361.227(3)(a) or (b) are present, the taxable value of improvements or personal property calculated pursuant to NRS 361.227, must be adjusted by multiplying the percentage use and time factors against replacement cost new less depreciation for improvements or the acquisition cost less depreciation for personal property.

(1) For example, assume the taxable value of a building owned by Sagebrush County, and containing 50,000 square feet, is $1,000,000. About 25,000 square feet is leased to XYZ company for six months during the year.

The possessory interest value in the building is $250,000, calculated as follows:

25,000 square feet / 50,000 square feet = .5, or 50% of the building is used or leased.

6 months/12 months = .5, or 50% of the time the building is actually used or leased.

$1,000,000 x 50% = $500,000 value of property actually used or leased.

$ 500,000 x 50% = $250,000 value of property accounting for time used or leased.

(2) In a second example, assume the taxable value of personal property owned by Sagebrush County and leased to XYZ company is $100,000. It is determined that the lease of the property will expire three months after the lien date. The possessory interest value in the personal property is $25,000, calculated as follows:

3 months / 12 months = 25% of the time the personal property is used or leased.

$100,000 x 25% = $25,000 value of property accounting for time used or leased.

3. In the event of concurrent possessory interest uses in the same property as described in this chapter, the county assessor shall apportion the taxable value among the possessors by determining the percentage of use of each possessor using the valuation methodologies described in this section.

Section 10. ***Determination Of Full Cash Value Of Possessory Interests In Real And Personal Property. When a determination is made about whether taxable value exceeds full cash value, and in the event the requirements of NRS 361.227(5)(a)-(c) are employed to make the determination, the assessor must ensure the results of the sales comparison approach, summation approach, and income approach reflect only the value of the possessory interest.***