

LCB File No. T030-02

ADOPTED TEMPORARY REGULATION OF THE
NEVADA TAX COMMISSION

Filed with the Secretary of State on 12/12/2002

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

Chapter 361 of NAC is hereby amended by adding thereto new sections to read as follows:

Part A. Real and Tangible Personal Property Used for Low-Income Housing and Related Facilities (NRS 360.090, 361.082)

Section 1. Definitions. As used in this chapter, unless the context otherwise requires:

(a) “Qualified low-income housing project” means any project for residential rental property meeting one of two requirements, whichever is elected by the taxpayer pursuant to 26 U.S.C. §42:

(1) “20-50 test” means 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of the area median gross income;

(2) “40-60 test” means 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of the area median gross income.

(b) “Low-income unit” means any unit in a building if such unit is rent-restricted pursuant to 26 U.S.C. §42 (g) (2) and if the individuals occupying such unit meet the income limitations applicable under the “20-50 test” or the “40-60 test” as those tests are described in 26 U.S.C. §42 (g) (1). Other exceptions and limitations apply pursuant to 26 U.S.C. §42.(i)(3).

(c) “Related facilities” means that part of qualified low-income housing occupied or used exclusively by persons with low incomes such as, but not limited to, playgrounds, community rooms, and the manager’s office and unit.

Section 2. (NRS 360.090, 361.082, 361.155) Application form; records required to claim exemption.

(a) An owner of property desiring to qualify property for exempt status pursuant to NRS 361.082 shall apply for exemption to the county assessor no later than June 15. The application must be on a form approved by the commission.

(b) Applications for exemption of property pursuant to NRS 361.082 must contain information showing:

(1) The property is part of a qualified low-income housing project funded in part by federal money appropriated pursuant to 42 U.S.C. §§ 12701, et seq for the year in which the exemption applies;

(2) The property, including related facilities, has been occupied or used by qualified residents or will be used exclusively as a low income unit as of June 15; and

(3) The total number of qualifying low-income units and the number of units rent restricted and currently occupied by individuals meeting the income limitation applicable under 26 U.S.C. 42 (g)(1).

(c) Additional documentation must be attached to the application, including, but not limited to:

(1) Documentation showing the property is part of a qualified low-income housing project, such as one or more of the following:

I. Declaration of Restrictive Covenants; or

II. Letter of Verification from the appropriate housing agency in charge of dispensing federal funds that the project qualifies as a qualified low-income housing project. The verification must include the type of federal funding granted, the date the funding was granted, and the date of expiration; or

III. Other verification of federal fund disbursement and the date of the disbursement.

(2) Documentation showing the election of the taxpayer to qualify as a low-income housing project under the “20-50 test” or the “40-60 test” pursuant to 26 U.S.C. 42 (g). Such documentation may include a copy of that portion of a federal income tax return claiming the federal tax credit.

(3) For all initial applications, a copy of:

I. the first quarter or annual status report for the project issued by the appropriate housing agency showing unit number, unit size, tenant name, household size, actual tenant paid rent, utility allowance, annual household income, and unit activity;

II. HUD Section 8 Area Median Income Limits currently incorporated in the Home Program Income Limits as of March 31st of the most current year.

(d) The assessor will require an annual report to include all of the provisions identified in Chapter 361, Part A, Section 2(b) and (c) or an affidavit on a form approved by the commission. Documentation for Section 2 (b)(1) is not required on any application for renewal of the exemption after it has once been submitted.

(e) The owner of the property shall maintain accurate records in support of the information requested.

(f) The assessor shall disallow claims for exemption on units meeting any one of the following criteria:

(1) Units not rent-restricted;

(2) Units not part of a qualified low-income housing project funded in part by federal money appropriated pursuant to 42 U.S.C. § 12701 et seq. for the year in which the exemption applies.

(g) Any claim for exemption denied by the county assessor affecting the taxable value of the property may be appealed to the county board of equalization pursuant to NRS 361.345.

Part B. (NRS 360.090, 361.228) Standard prewritten computer programs ineligible for exemption as intangible personal property.

Section 1. For purposes of this section, the following definitions apply:

(a) "Software" means programs, procedures, rules, and any associated documentation pertaining to the operation of a computer system.

(b) "Custom software program" means software having all of the following characteristics:

(1) Developed pursuant to the special order of a customer and produced by a provider exclusively for a specific user; and

(2) Of an original, one-of-a-kind nature;

(c) “Standard prewritten program” sometimes referred to as “canned” or “off-the-shelf” software, means software which is not originally developed, and produced for an individual user.

Sec. 2. Standard prewritten programs, are tangible personal property and are not eligible for exemption from property taxes. Custom computer programs are intangible personal property pursuant to NRS 361.228 and are exempt property.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. T030-02**

The Nevada Tax Commission adopted temporary regulations pertaining to Chapter 361, temporarily assigned to Part A (Low income housing); Part B (Standard prewritten computer programs ineligible for exemption as intangible personal property); Parts C through L (appraiser certification); and to Chapter 361A, Parts A through G (valuation of agricultural lands), of the Nevada Administrative Code on September 9, 2002. A copy of the regulations as adopted is attached hereto.

INFORMATIONAL STATEMENT

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 notices of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/Hearing</u>	<u>Date</u>	<u># Notified</u>	<u>#Representing Bus.</u>
7-12-02	Workshop	7-30-02	385	291
8-06-02	Workshop	8-21-02	591	497
8-08-02	Hearing	9-09-02	465	371

The mailing list included the interested parties list maintained by the Department, as well as centrally assessed taxpayers, mine operators, agricultural organizations, low-income housing organizations, and officials of local jurisdictions subject to these regulations.

Several oral and written comments were received, particularly with regard to new proposed language on the eligibility of computer software for designation as intangible personal property; the exemption of low income housing; appraiser certification; and the valuation of agricultural lands. A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 687-4841 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at mmjacobs@govmail.state.nv.us.

2. The number of persons who:

(a) Attended and testified at each workshop:

	<u>Attended</u>	<u>Testified</u>
July 30, 2002	11, including 1 NTC member	11
August 21, 2002	20	12

(b) Attended and testified at the hearing on adoption:

	<u>Attended</u>	<u>Testified</u>
9-09-02		
Members of the Commission	6	
Members of the public	3	9

(c) Submitted to the agency written comments: 8

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.

The regulations presented no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public, and none could be quantified. Nevertheless, approximately 75% to 85% of the notices were sent to individuals or associations representing business.

The Nevada Mining Association, Nevada Taxpayers Association, and certain individuals representing centrally assessed properties commented on portions of the regulations, particularly with regard to the NACs relating to the circumstances under which computer software may be considered to be intangible personal property. The Affordable Housing Resource Council and the Rural Community Assistance Corporation commented on the low-income housing regulations regarding the qualification of units for purposes of exemption. Members of the Nevada Assessors Association commented on all of the proposed language changes.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 687-4841 or by writing to the Committee on Local Government Finance, c/o Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at mmjacobs@govmail.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.

Two minor corrections were made to the new language in NAC 361, Part A(2)(c)(3)(I) and to NAC 361, Part A(2)(d), to correct references regarding low income housing. No other changes were made to NAC 361, Parts A. The reason for adopting the new language in NAC 361, Parts A regarding low-income housing is to fulfill the requirements of NRS 361.082 (3).

NAC 361, Part B regarding the eligibility of standard prewritten computer programs for exemption as intangible personal property, was adopted to clarify the criteria for exemption.

NAC 361, Parts C through L regarding appraiser certification and NAC 361A, Parts A through G regarding the valuation of agricultural lands, were adopted in their entirety. The reason for the adoption of new language in NAC, Parts C through L regarding appraiser certification is the recommendation of the Attorney General's office to require the Appraiser Certification Board to operate under regulations adopted by the Tax Commission instead of its own by-laws.

The reason for the adoption of NAC 361A, Parts A through G regarding the valuation of agricultural lands is to clarify the procedures for the designation of property as agricultural real property; to recognize the agricultural land classification system currently in place; to clarify the methodology for determining the value of agricultural use land and the process for determining when agricultural land is converted to a higher use; and to provide a method for calculating the deferred tax when a parcel is converted to a higher use.

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

The adopted regulations present no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public. It is anticipated the regulations promote and enhance the efficient return and dissemination of information regarding the low-income housing exemption; the exemption of certain kinds of computer software as intangible personal property; and the agricultural lands deferment. The regulations also promote the certification of appraisers for property tax purposes, and identify the rights and responsibilities of the individuals applying for certification.

(b) Both immediate and long-term effects.

The proposed regulations present no reasonably foreseeable or anticipated immediate or long-term economic effects to businesses or to the general public.

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

The Department anticipates little, if any, additional cost to administer the regulations.

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 adopted 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.

There are no federal regulations regarding the appraisal, assessment, or exemption from taxation, of property, or with the certification of appraisers, for state property tax purposes with which these regulations comply.

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.

These regulations do not provide or involve a new fee; therefore there is no total annual amount the Department expects to collect or use.