

LCB File No. T031-02

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.

AUTHORITY: NRS 360.090, 360.250

GENERAL PROVISIONS

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

PART A. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

Section 1. “Animal Unit Month” or “AUM” has the meaning ascribed to it in NRS 361.325 (1) (b).

Sec. 2. “Animal Unit” or “AU” has the meaning ascribed to it in NRS 361.325 (1) (b).

Sec. 3. “Animal Unit Equivalent” or “AUE” means the equivalent to the animal unit for various kinds and sizes of animals.

Sec. 4. “Aquatic agriculture” means the propagation, cultivation and harvesting of plants or animals indigenous to water in a controlled or selected aquatic environment for the commercial production of food.

Sec. 5. “Assessing authority” means the county assessor if the property to be considered is 20 acres or greater; or the department if the property to be considered is less than 20 acres.

Sec. 6. “Business venture for profit” means the owner or lessee shall engage in agricultural pursuits for a reasonable profit or at least upon the expectation of reasonable profit consistent with the productive capability of the land unit. “Reasonable profit or expectation of profit” shall not be affected by independent intervening causes of production failure or non-productive use beyond the control of the owner or lessee, including but not limited to land idle under government programs. Other property not fulfilling this requirement may still qualify as agricultural use land as when an orchard or other perennial crop with a long maturation period has not yet matured.

Sec. 7. "Carrying capacity" means the measure of the capacity of grazing land to provide adequate forage to sustain livestock for a given period of time. Carrying capacity is expressed in terms of animal units per acre.

Sec. 8. "Commission" means the Nevada tax commission.

Sec. 9. "Crops" means agricultural products, such as, but not limited to: alfalfa, barley, certified seed, christmas trees, garlic, grass hay, nursery stock, oats, onions, pasturage, sod, and wheat, grown in soil or any other medium.

Sec. 10. "Department" means the department of taxation.

Sec 11. "Fur-bearing animals" means fur-bearing mammals including, but not limited to: mink, ermine, otter, chinchilla and fox.

Sec. 12. "Greenhouse" means a fully or partially enclosed structure that is used for the propagation, cultivation or protection of food or fiber. The term includes weather shelters and hot or cold frames.

Sec 13. "Livestock" means, domestic animals, including but not limited to, cattle, sheep, goats, swine, poultry, fish, and equine animals used for food, fiber, breeding, draft, or profit.

Sec. 14. "Noncontiguous Parcels" means parcels of land with no common boundary and completely detached from one another, including, but not limited to, two portions of land connected only by a point, as for example, when the northeast corner of a parcel connects at the point of the southwest corner of another parcel.

Sec. 15. "Operator" means a person who engages in an agricultural pursuit as a business venture for profit and may be either the owner or occupant of the agricultural real property.

Sec. 16. "Poultry" means domestic and game birds produced for meat, eggs or other poultry products and includes, but is not limited to: chickens turkeys, ducks, geese, peafowl, ostriches and pheasants, quail or chucker (NRS 361A.030 section 1 [b]).

ADMINISTRATION

PART B. Application for Agricultural Use Assessment; contents; filing requirement; records required to claim agricultural use.

Section 1. An owner of property desiring to qualify property for agricultural use assessment pursuant to NRS 361A.110 shall apply for said agricultural use assessment to the assessing authority on or before the statutory due date of any year. The application must be on a form approved by the commission.

Sec. 2. Applications for agricultural use assessment of property pursuant to NRS 361A.110 must contain the following information:

(a) The names, addresses, and telephone numbers of the owner or his representative, and lessee if applicable;

(b) A description of the uses to which the land is put, including residential use and other higher uses if applicable;

(c) A description of the type of agricultural operation;

(d) The size of the land devoted to agricultural use;

(e) A description of any non-contiguous parcels which may qualify for agricultural use;

(f) The number of years the land has been devoted exclusively to agricultural use;

(g) The gross income received from agricultural pursuits during the immediately preceding calendar year; and

(h) Expenses and net income attributable to the agricultural pursuit.

Sec. 3. Additional documentation may be requested by the assessor relating to a determination of agricultural pursuit or conducting a business venture for profit. Any additional documentation must be attached to the application, including, but not limited to, leases, receipts of rent paid, account balance sheets, profit and loss statements, audited financial statements, and Federal income tax returns.

Sec. 4. In the event the application is for property containing less than 20 acres, the county assessor shall forward the application within 10 days to the department for review and qualification of property as agricultural real property.

DESIGNATION OF AGRICULTURAL AND NON-AGRICULTURAL LANDS

PART C. Procedures for the Designation of Property as Agricultural Real Property

Section 1. The assessing authority must determine from field inspection and other available information whether the activities conducted on the property qualify as agricultural pursuits.

(a) In addition to the agricultural pursuits designated in NRS 361A.030 (1) (a-e), including raising crops, livestock, poultry, fur-bearing animals, bees, and dairying, the following activities qualify as an agricultural pursuit, provided that the pursuit is in accordance with generally accepted agricultural practices:

I. Aquatic agriculture, including but not limited to hydroponic gardens;

II. Intensively produced fruits and vegetables, including but not limited to those produced in greenhouses;

III. Experimental crop production.

(b) The assessing authority must also consider that certain activities which appear to be agricultural in nature, do not by themselves qualify as an agricultural pursuit. Examples of activities may include, but are not limited to:

I. Grazing on land by any animal kept as a hobby, unless accompanied by other agricultural activities which would generate an expectation of profit consistent with the land;

II. Harvesting shrubs or seeds that grow wild on the land, unless accompanied by other agricultural activities which would generate an expectation of profit consistent with the land;

III. Hunting or harvesting game animals or birds unless accompanied by other agricultural activities which would generate an expectation of profit consistent with the land.

(c) The assessing authority must consider whether the activity occurs after the agricultural product has been raised and harvested, and is not a process or step necessary and incident to the preparation and storage of products raised on the property. Processing activities such as pasteurizing and bottling milk, cheese making, honey or candy manufacturing, or slaughtering, dressing and packing meat do not qualify land for agricultural assessment.

Sec. 2. Upon a determination the activity on the land qualifies as an agricultural pursuit, the assessing authority must then determine whether the operator is engaged in the agricultural pursuit as a business venture for profit.

(a) The agricultural pursuit must raise the expectation of profit consistent with:

I. The size of the property used in the operation;

II. The capacity of the property, including but not limited to, suitability, terrain, water availability, soil capabilities, type of vegetation grown, growing season, AUM's, AU's or AUE's;

III. The viability of the property, including but not limited to, water cost and availability, soil capacities, market proximity, fencing and suitability for other uses.

IV. Any other factors or criteria that the assessing authority deems appropriate under the circumstances.

(b) In making a determination about whether the operator is engaged in a business venture for profit, especially in cases where the land size appears to be too small to sustain a monetary profit from agricultural pursuits, the assessing authority may consider whether a reasonable effort has been made to sufficiently and adequately care for the land, as evaluated in time, labor, equipment, management and capital consistent with accepted agricultural practices for the type of agricultural operation.

(c) Gross income derived from non-agricultural uses of the land, such as, but not limited to, leasing of land for billboard; leasing of land for roadside produce stands; leasing of land for hunting; income derived from the mineral estate, whether severed or not; income from the extraction of sand and gravel or other earth products operations; interest income from a loan or investment, royalties, or dividends; or transfer or sale of property rights such as conservation easements or severed mineral rights, must not be included in the total minimum gross income requirements.

Sec. 3. The assessing authority must determine from field inspection and other available information whether noncontiguous parcels qualify for agricultural use, pursuant to the requirements of NRS 361A.120 and this chapter.

CLASSIFICATION

PART D. Classification of Agricultural Land.

Section 1. Land devoted to agriculture must be categorized and valued pursuant to the classifications adopted by the commission in the Agricultural Instructions Bulletin. The

Agricultural Instructions Bulletin must be reviewed and adopted annually by the commission.

VALUATION OF AGRICULTURAL USE LAND

PART E. Methodology for Determining the Value of Agricultural Use Land.

Section 1. The department shall annually, on or before the first Monday in October, conduct a study of the value of lands designated for agricultural use and present the study for approval by the Commission. The results of the study as approved shall be incorporated into the Agricultural Land Bulletin for publication and use by county assessors.

Sec. 2. Pursuant to the requirements of NRS 361.325, the study conducted by the department shall be on the basis of the productivity of the land. Productive capability may be determined by classification of land and application of a capitalized earnings approach.

(a) Cultivated and native meadow or wild hay lands.

I. Agricultural income for lands designated as cultivated may be projected by developing gross income estimates based on average commodity prices. Sources of commodity prices of agricultural products to be used by the department may include, but are not limited to, the Nevada Agricultural Statistics Service and a survey of growers and local buyers.

II. A net operating income must be determined by subtracting from the gross income an estimated allocation for expenses. Expenses for lands must be appropriate to the type of land being valued, but may include typical water costs, irrigation system maintenance costs, and loss in production due to necessary management practices, such as during the seed year or the first year of the hay stand. The expenses subtracted from the gross income results in a net operating income.

III. A five-year weighted average of net operating income must be capitalized into an indication of land value per acre. This is done by multiplying the yield per acre (in tons per acre) by the net income per ton and then dividing the result by the capitalization rate. The result is multiplied by the level of assessment to obtain an assessed value per acre.

(b) Pasture and grazing lands

I. Agricultural income for lands designated as pasture may be projected by developing gross income estimates based on rentals per AUM per acre. Sources of rental prices for pasture and grazing lands to be used by the department may include, but are not limited to, the Nevada Agricultural Statistics Service and a survey of growers and local buyers.

II. A net operating income must be determined by subtracting from the gross rent per AUM an estimated allocation for expenses. Expenses for lands must be appropriate to the type of land being valued, but may include typical miscellaneous costs such as management, insurance, stock water and fence maintenance costs. The expenses subtracted from the gross income results in a net operating income to land.

III. A five-year weighted average of net operating income must be capitalized into an indication of land value per acre. This is done by multiplying the net income per acre and then dividing the result by the capitalization rate. The result is multiplied by the level of assessment to obtain an assessed value per acre.

CONVERSION OF AGRICULTURAL USE PROPERTY TO A HIGHER USE

PART F. Determination of Conversion to a Higher Use.

Section 1. Physical alteration means the application of man-made changes, such as, but not limited to, changes in contour of land, removal of native plant life, diversion of water channels, and building site improvements intended to enable the land to be used for purposes other than agricultural uses.

Sec. 2. In the event a final map or parcel map has been recorded, the county assessor must determine whether the map creates one or more parcels not intended for agricultural use. In making such a determination, the county assessor must consider the following:

I. The size of the parcel or parcels being created;

II. The capacity of the property, including but not limited to, suitability, terrain, water availability, soil capabilities, type of vegetation grown, growing season, AUM's and AU's; or

III. The viability of the property, including but not limited to, water cost and availability, soil capacities, market proximity, fencing and suitability for other uses.

Iv. Any other factors or criteria that the assessing authority deems appropriate under the circumstances

Sec. 3. If the county assessor finds that a conversion has taken place pursuant to the requirements of NRS 361A.031 and this chapter, or otherwise becomes aware that conversion has taken place, he must convert the property, or that portion of the property no longer qualifying as agricultural property, to a higher use.

PART G. Calculation of Deferred Tax When Parcel Converted to a Higher Use.

Section 1. The county assessor shall calculate the amount of deferred tax using the following steps:

(a) Determine what the taxable value would have been pursuant to the provisions of NRS 361.227 and NAC Chapter 361 in the fiscal year in which the conversion took place and up to the preceding six fiscal years.

(b) Using the taxable value so derived, calculate the amount of taxes for each fiscal year in which taxes would have been due and payable. The tax rate to be applied to the assessed value must be the rate used in the year for which the taxable value is established.

(c) Subtract from the amount of taxes established in (b) above the amount of taxes paid or payable based on the agricultural use assessment. The difference is the amount of deferred tax and must be added on the next property tax statement pursuant to the provisions of NRS 361A.280 if not already paid.

(d) The value of the land must be established based on the taxable value of comparable land for the previous six years.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. T031-02**

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.