

**REVISED PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R030-03

September 4, 2003

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

AUTHORITY: §§1-26, NRS 360.090, 360.250

Section 1. Chapter 361A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 25, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 13, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Animal unit” has the meaning ascribed to it in paragraph (b) of subsection 1 of NRS 361.325.*

Sec. 4. *“Animal unit month” has the meaning ascribed to it in paragraph (b) of subsection 1 of NRS 361.325.*

Sec. 5. *“Assessing authority” means:*

- 1. The county assessor if the property to be considered is 20 acres or more; or*
- 2. The Department if the property to be considered is less than 20 acres.*

Sec. 6. *“Business venture for profit” means an agricultural pursuit engaged in by an operator for a reasonable profit or at least upon the expectation of a reasonable profit consistent with the productive capability of the land unit.*

Sec. 7. *“Commission” means the Nevada Tax Commission.*

Sec. 8. *“Converted to a higher use” has the meaning ascribed to it in NRS 361A.031.*

Sec. 9. *“Crop” means any agricultural product, including, without limitation, alfalfa, barley, certified seed, Christmas trees, garlic, grass hay, nursery stock, oats, onions, pasturage, sod and wheat, that is grown in soil or any other medium.*

Sec. 10. *“Department” means the Department of Taxation.*

Sec. 11. *“Livestock” means domestic animals, including, without limitation, cattle, sheep, goats, swine, poultry, fish and equine animals, used for food, fiber, breeding, draft or profit.*

Sec. 12. *“Operator” means a person who engages in an agricultural pursuit as a business venture for profit. The operator may be either the owner or occupant of the agricultural real property.*

Sec. 13. *“Poultry” means domestic and game birds produced for meat, eggs or other poultry products, including, without limitation, chickens, turkeys, ducks, geese, peafowl, ostriches, pheasants, quail and chukar.*

Sec. 14. *An owner of property who wishes to qualify the property for the agricultural use assessment pursuant to NRS 361A.110 must apply to the assessing authority on or before the date required by NRS 361A.110. The application must be on a form approved by the Commission.*

Sec. 15. 1. *An application for agricultural use assessment filed pursuant to NRS 361A.110 must contain:*

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

(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 noncontiguous parcels which may qualify for agricultural use;*
- (f) The number of years which 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.*

2. As used in this section, “noncontiguous parcels” means parcels of land with no common boundary and completely detached from one another, including, without limitation, two portions of land connected only by a point, such as when the northeast corner of a parcel connects at the point of the southwest corner of another parcel.

Sec. 16. *Additional documentation may be requested by the assessing authority relating to a determination of agricultural pursuit or conducting a business venture for profit, including, without limitation, leases, receipts or rent paid, account balance sheets, profit and loss statements, audited financial statements and Federal income tax returns. Such additional documentation must accompany the application but does not need to be recorded.*

Sec. 17. *If a county assessor receives an application for agricultural use assessment for property containing less than 20 acres, the county assessor shall forward the application within 10 days after the date on which he receives the application to the Department for review and qualification of property as agricultural real property.*

Sec. 18. *1. The assessing authority must determine from field inspection and other available information whether the activities conducted on the property qualify as agricultural pursuits.*

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

- (a) Aquatic agriculture, including, without limitation, hydroponic gardens;*
- (b) Intensively produced fruits and vegetables, including, without limitation, fruits and vegetables produced in greenhouses; and*
- (c) Experimental crop production.*

3. Notwithstanding any specific statutory provision to the contrary, the following types of activities which may appear to be agricultural in nature do not by themselves qualify as an agricultural pursuit, including, without limitation:

- (a) Grazing on land by any animal kept as a hobby;*
- (b) Harvesting shrubs or seeds that grow wild on the land; and*
- (c) Hunting or harvesting game animals or birds.*

↪Such an activity may qualify as an agricultural pursuit if the activity is accompanied by other agricultural activities which would generate an expectation of profit consistent with the land.

4. In determining whether an activity qualifies as an agricultural pursuit, the assessing authority shall consider whether the activity occurs after the agricultural product has been raised and harvested or whether the activity is a process or step necessary and incident to the preparation and storage of products raised on the property. Processing activities, including, without limitation, pasteurizing and bottling milk, cheese making, honey or candy

manufacturing, and slaughtering, dressing and packing meat, do not qualify for the agricultural use assessment.

5. As used in this section:

(a) “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.

(b) “Fur-bearing animals” means fur-bearing mammals, including, without limitation, mink, ermine, otter, chinchilla and fox.

(c) “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. 19. 1. Upon a determination that an 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. When determining whether an operator is engaged in a business venture for profit, reasonable profit and the expectation of a reasonable profit are not affected by any independent intervening causes of production failure or nonproductive use that are beyond the control of the operator, including, without limitation, land idle under government programs. Property not otherwise fulfilling the requirements to be considered as land on which an agricultural pursuit is conducted may still qualify as such if there are extenuating circumstances, including, without limitation, use of the land for an orchard or other perennial crops with a long maturation period that have not yet matured.

2. To qualify as a business venture for profit, an agricultural pursuit must raise the expectation of profit consistent with:

- (a) The size of the property used in the operation;*
- (b) The capacity of the property, including, without limitation, suitability, terrain, availability of water, soil capabilities, type of vegetation grown, growing season, animal unit months, animal units and animal unit equivalents;*
- (c) The viability of the property, including, without limitation, the cost and availability of water, soil capacities, market proximity, fencing and suitability of the property for other uses; and*
- (d) Any other factors or criteria that the assessing authority deems appropriate under the circumstances.*

3. In making a determination about whether the operator is engaged in a business venture for profit, especially in cases where the size of the land 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 care for the land sufficiently and adequately, as evaluated in time, labor, equipment, management and capital consistent with accepted agricultural practices for the type of agricultural operation involved.

4. Gross income derived from nonagricultural uses of the land must not be included in the requirements for the total minimum gross income, including, without limitation:

- (a) Leasing of the land for billboards;*
- (b) Leasing of the land for roadside produce stands;*
- (c) Leasing of the land for hunting;*
- (d) Income derived from the mineral estate, whether severed or not;*

(e) Income from the extraction of sand and gravel or other operations relating to products from the earth;

(f) Interest income from a loan or investment, royalties or dividends; and

(g) Transfer or sale of property rights such as conservation easements or severed mineral rights.

5. As used in this section, “animal unit equivalent” means the equivalent to the animal unit for various kinds and sizes of animals.

Sec. 20. Land devoted to agriculture must be categorized and valued pursuant to the classifications in the Agricultural Instructions Bulletin that is annually prepared by the Commission in accordance with NRS 361A.140.

Sec. 21. 1. On or before the first Monday in October of each year, the Department shall conduct a study of the value of lands designated for agricultural use and present the study for approval by the Commission. The Commission will incorporate the results of the study so approved into the bulletin prepared pursuant to NRS 361A.140 for use by county assessors.

2. The study conducted by the Department must, in accordance with NRS 361.325, be based on the productivity of the land. Productive capability of land may be determined by the classification of land and application of a capitalized earnings approach as follows:

(a) For cultivated and native meadow or wild hay lands:

(1) Agricultural income for lands designated as cultivated may be projected by developing estimates of gross income based on average commodity prices. Sources of commodity prices of agricultural products which the Department may use include, without limitation, the Nevada Agricultural Statistics Service and a survey of growers and local buyers.

(2) A net operating income must be determined by subtracting an estimated allocation for expenses from the gross income. Expenses for lands must be appropriate to the type of land being valued and may include the typical costs for water and the maintenance of irrigation systems, and loss in production due to necessary management practices, such as loss in production 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.

(3) A 5-year weighted average of net operating income may be capitalized into an indication of the value of the land per acre by multiplying the yield per acre, measured in tons per acre, by the net income per ton and then dividing the result by the capitalization rate. The result must be multiplied by the level of assessment to obtain an assessed value per acre.

(b) For pasture and grazing lands:

(1) Agricultural income for lands designated as pasture may be projected by developing estimates of gross income based on the carrying capacity of the land as measured by rentals per animal unit months per acre. Sources of rental prices for pasture and grazing lands which the Department may use include, without limitation, the Nevada Agricultural Statistics Service and a survey of growers and local buyers.

(2) A net operating income must be determined by subtracting an estimated allocation for expenses from the gross rent per animal unit month. Expenses for lands must be appropriate to the type of land being valued and may include typical miscellaneous costs, including costs for management, insurance, stock water and maintenance of fences. The expenses subtracted from the gross income results in a net operating income to land.

(3) A 5-year weighted average of net operating income must be capitalized into an indication of land value per acre by multiplying the net income per acre and then dividing the

result by the capitalization rate. The result must be multiplied by the level of assessment to obtain an assessed value per acre.

3. As used in this section, “carrying capacity” means the measure of the capacity of grazing land to provide adequate forage to sustain livestock for a given period.

Sec. 22. The Commission will interpret the term “physical alteration,” as used in NRS 361A.031, to mean the application of man-made changes, including, without limitation, changes in the contour of the 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. 23. If 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:

- 1. The size of the parcel or parcels being created;*
- 2. The capacity of the property, including, without limitation, suitability, terrain, availability of water, soil capabilities, type of vegetation grown, growing season, animal unit months and animal units;*
- 3. The viability of the property, including, without limitation, cost and availability of water, soil capacities, market proximity, fencing and suitability of the property for other uses; and*
- 4. Any other factors or criteria that the assessing authority deems appropriate under the circumstances.*

Sec. 24. If the county assessor finds that a property has been converted to a higher use or otherwise becomes aware that such a conversion has taken place, the county assessor must

convert the property, or that portion of the property no longer qualifying as agricultural property, to a higher use.

Sec. 25. *To calculate the amount of deferred tax that must be assessed when property is converted to a higher use:*

1. The county assessor must determine what the taxable value of the property would have been pursuant to the provisions of this chapter and NRS 361.227 for the fiscal year in which the conversion took place and for the 6 previous fiscal years. The value of the land must be established based on the taxable value of comparable property for the 6 previous fiscal years.

2. Using the taxable value so derived, the amount of taxes for each fiscal year in which taxes would have been due and payable must then be calculated. 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.

3. The amount of taxes paid or payable based on the agricultural use assessment must then be subtracted from the amount of taxes calculated pursuant to subsection 2. The resulting difference is the amount of deferred tax which must be added on the next property tax statement pursuant to NRS 361A.280 if the deferred tax has not already been paid.

Sec. 26. NAC 361A.100, 361A.200 and 361A.300 are hereby repealed.

TEXT OF REPEALED SECTIONS

NAC 361A.100 Calculation of deferred tax for property converted to higher use.
(NRS 360.090, 361A.155, 361A.280)

1. If a portion of a property that has been granted an agricultural use assessment and has accumulated deferred taxes and interest, is converted from agricultural use to a higher use, the county assessor shall calculate the deferral base for that portion that has been converted to the higher use. Interest will be calculated through June 30, 1979.

2. The calculation must be based on a formula which considers the contribution to the assessed value that the converted portion of the land made to the assessed value of the whole property.

3. The following is for example purposes only; the calculation made by the county assessor must be based on actual acreages and values of affected property.

Example of an alfalfa, row crop and cattle ranch:

Assuming a potential (market) value of the entire ranch, as determined by the county assessor, of \$150,000, the potential assessed valuation is \$52,500.

STEP 1

| CLASSIFICATION OF LAND | ACRES | BULLETIN ASSESSED VALUE | PERCENT OF CONTRIBUTION (Assessed value of each class divided by total assessed value) | X | POTENTIAL ASSESSED VALUE OF RANCH | = | POTENTIAL ASSESSED VALUE OF CLASS |
|---------------------------|-------|-------------------------------|---|---|--|---|--|
| 4th cultivated land | 16 | \$ 656 | 3 | | \$52,500 | | \$ 1,575 |
| 1st wild hay land | 100 | 5,000 | 24 | | 52,500 | | 12,600 |
| 2nd wild hay land | 250 | 9,000 | 43 | | 52,500 | | 22,575 |
| 3rd pasture land | 100 | 3,000 | 14 | | 52,500 | | 7,350 |
| 1st grazing land | 90 | 630 | 3 | | 52,500 | | 1,575 |
| 2nd grazing land | 293 | 1,026 | 5 | | 52,500 | | 2,625 |
| 3rd grazing land | 596 | 1,260 | 6 | | 52,500 | | 3,150 |
| 4th grazing land | 240 | 300 | 2 | | 52,500 | | 1,050 |
| Total | 1,675 | \$20,872 | 100 | | | | \$52,500 |

Assuming 10 acres of 4th cultivated land, 50 acres of 2nd wild hay land and 86 acres of 3rd grazing land were converted to a higher use:

STEP 2

4th cultivated land, $\$1,575 \div 16 \text{ acres} = \$98.44/\text{acre}$

(potential assessed value) x 10 acres = \$984 total assessed value.

2nd wild hay land, $\$22,575 \div 250 \text{ acres} = \$90.30/\text{acre}$

(potential assessed value) x 50 acres = \$4,515 total potential assessed value.

3rd grazing land, $\$3,150 \div 586 \text{ acres} = \$5.38/\text{acre}$

(potential assessed value) x 86 acres = \$462 total potential assessed value.

STEP 3

| | | | | | |
|-------------------------------|---|------|---|---------|-----------------------------------|
| 4th cultivated land, 10 acres | | | | \$984 | (potential assessed value) |
| 4th cultivated land, 10 acres | x | \$41 | = | 410 | (agricultural use assessed value) |
| deferred tax base | | | | \$574 | |
| 2nd wild hay land, 50 acres | | | | \$4,515 | (potential assessed value) |
| 2nd wild hay land, 50 acres | x | \$36 | = | 1,800 | (agricultural use assessed value) |
| deferred tax base | | | | \$2,715 | |

| | | | | | |
|----------------------------|---|--------|---|-------|-----------------------------------|
| 3rd grazing land, 86 acres | | | | \$462 | (potential assessed value) |
| 3rd grazing land, 86 acres | x | \$2.15 | = | 185 | (agricultural use assessed value) |
| deferred tax base | | | | \$277 | |

STEP 4

Total Deferred Tax Base

| | |
|---------------------|----------------|
| 4th cultivated land | \$ 574 |
| 2nd wild hay land | 2,715 |
| 3rd grazing land | 277 |
| TOTAL | \$3,566 |

The \$3,566 will be extended by the applicable tax rate of each appropriate tax year by the county.

This calculation must be made for each year for which the deferred tax may be lawfully collected. The total of those several calculations must constitute the amount to be recaptured.

361A.200 Assessment roll; tax statement. (NRS 360.090)

1. If all the agricultural and open-space property of an owner is listed under one roll or parcel number, then immediately following must be listed the potential use assessed value under real estate, improvements and personal property. Property which has multiple roll or parcel numbers, may be grouped by the property owner with one entry following the last listing for the potential use assessed value under real estate, improvements and personal property. The affected parcels are to be noted similar to the following: “Consolidated potential use valuation listed under parcel number” The parcel under which the consolidated potential use assessed valuation is listed must include a note similar to the following: “Consolidated potential use valuation-parcel (or roll) numbers”

2. The county auditor must extend the potential use valuation as all other values are extended. For agricultural use and open-space use property there must be an extension for:

- (a) The agricultural or open-space assessed value; and
- (b) The potential assessed value.

3. The tax statement for property receiving deferred tax status must have an entry in substantially the following form:

Potentially due pursuant to NRS 361A.280

Potential use valuation:

Deferred tax-current year:

Accumulated deferred tax:

Accumulated deferred interest through June 30, 1979:

.....
.....
.....
.....

361A.300 Rights of taxpayer to withdraw. (NRS 360.090) A taxpayer may at any time withdraw from the program by paying all the deferred accumulated taxes and interest to date. He shall contact the county to determine an accurate calculation of the deferred taxes and interest due.