

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R032-03

August 7, 2003

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

AUTHORITY: §§1-14, NRS 360.090.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. 1. *If a taxpayer has overpaid any tax pursuant to chapter 372 or 374 of NRS, the taxpayer may file a claim for a credit or refund with the Department. The Department shall not consider such a claim unless the claim is filed within the statutory period provided in NRS 372.635 or 374.640, as appropriate.*

2. In addition to the requirements set forth in NRS 372.645 and 374.650, a claim for a credit or refund must:

(a) Be witnessed by a notary public or contain an acknowledgement that it is signed under penalty of perjury; and

(b) Include documentation supporting the claim.

3. If the overpayment is due to an error or omission in a previously filed return, the claim must be in the form of an amended return, as prescribed by the Department, for each period in which the tax was originally reported. The amended return must specify the original amounts reported, the correct amounts and the differences.

4. The person requesting the credit or refund must be the person, or his authorized representative, who was legally obligated to remit the tax to the Department.

5. Upon a determination by the Department that an overpayment was made by the taxpayer and upon the approval of the State Board of Examiners or board of county commissioners, as appropriate, the Department shall issue a statement to the taxpayer allowing a credit in the amount of the overpayment unless the taxpayer specifically requests a refund on the claim. The credit may be applied to any future tax liability of the taxpayer. If the taxpayer requests a refund, the Department shall issue a refund to the taxpayer in an amount which is equal to the amount of the credit owed to the taxpayer at the time the request for a refund is made. When applicable, the Department shall deduct from the credit or refund an amount equal to the amount deducted and withheld by the taxpayer for reimbursement for pursuant to NRS 372.370 or 374.375, as appropriate, for the cost of collecting the tax being credited or refunded in accordance with this section.

Sec. 3. *1. A retailer shall deduct from the gross receipts the full sales price of tangible personal property returned by a customer provided that such amount has been credited or refunded to the customer. The retailer shall keep adequate records that disclose the essential facts of any such refund or credit made to a customer.*

2. If a retailer credits or refunds to a customer the full sales price of returned goods:

(a) Before the retailer remits the tax to the Department, the amount of the sales price so credited or refunded must not be included in the gross receipts of the retailer in the return filed by the retailer for that period. A retailer shall file a return as required in NRS 372.360 or 374.365, as appropriate, even if, as a result of providing a credit or refund to a customer, there is no tax due from the retailer.

(b) After the retailer has remitted the tax to the Department, the retailer may deduct the amount of the sales price so credited or refunded from gross receipts on the return filed by the retailer for the period in which the credit was given or refund was made if the tax rates in the two periods are the same. If the tax rates are not the same, the retailer must submit to the Department an amended return for the period in which the original sale was made. If a retailer has insufficient gross receipts during the period in which a credit or refund has been made to a customer to offset the credit or refund so made, the retailer may take that amount as a credit against gross receipts and report a negative amount. Unless the retailer has requested a refund, the Department shall issue a statement to the retailer allowing a credit that may be applied against future tax liability of the retailer. If the retailer requests a refund, the Department shall issue a refund to the retailer in an amount that is equal to the amount of the credit owed to the retailer at the time the request is made.

3. If a customer has erroneously paid sales tax to a retailer, the customer must first seek a credit or refund of the tax from the retailer. If the customer attempts, but is unable to receive the credit or refund from the retailer, the customer may apply for the credit or refund directly from the Department. When applicable, the Department shall deduct from the credit or refund to be paid to the customer an amount equal to the amount deducted and withheld by the retailer for reimbursement for pursuant to NRS 372.370 or 374.375, as appropriate, for the cost of collecting the tax being credited or refunded.

4. When any returned tangible personal property is resold, the sale is subject to the tax pursuant to chapter 372 or 374 of NRS.

5. As used in this section, “retailer” includes:

(a) A retailer, as that term is defined in NRS 372.055; and

(b) A retailer, as that term is defined in NRS 374.060.

Sec. 4. The taxpayer may submit a formal claim, and any information relating thereto, after the statutory period for filing a claim has elapsed if, before the end of the statutory period, the taxpayer notifies the Department in writing of his intent to submit the claim. If the Department agrees to extend the period allowed for filing such a claim, the date on which the taxpayer filed the claim shall be deemed to be the date on which the taxpayer notified the Department in writing of his intent to submit the claim.

Sec. 5. 1. Any person who is required to file a return pursuant to chapter 372 or 374 of NRS and fails to do so within the time prescribed by specific statute, regulation or rule, or who files an incorrect, false or fraudulent return, must, upon written demand of the Executive Director or his designee, file the return required or the corrected return, as appropriate, within 10 days after the written demand for the return or corrected return has been mailed to the person. The person shall pay any tax due on the basis of such a return when filing the return.

2. If the person upon whom a written demand has been made fails to comply with the written demand, the Executive Director or his designee shall prepare a return or corrected return and assess a tax on the basis of that return. The return or corrected return must be prepared based on knowledge and information that is obtained through testimony or obtained by any other means available to the Executive Director or his designee.

Sec. 6. If a person files a return in response to a proposed deficiency determination, the Department may accept the late filed return as a petition for redetermination in accordance with NRS 360.360. The acceptance by the Department of such a late filed return may not be construed as a settlement or other resolution of the proposed deficiency determination so as to permit the taxpayer to raise the issue of res judicata or collateral estoppel during any

subsequent examination or audit of the records of the taxpayer. If the late filed return is filed after the 45-day due date, the Department shall not accept the return without verification of the amounts on the return, unless the differences between the proposed deficiency and the subsequent late filed return is diminimus.

Sec. 7. *As used in sections 7 to 13, inclusive, of this regulation, unless the context otherwise requires, “business tax” means the tax imposed before October 1, 2003, for the privilege of conducting business in this state.*

Sec. 8. *Any taxpayer who has a claim that the taxpayer overpaid the business tax may file a claim seeking a refund of the overpayment in accordance with sections 7 to 13, inclusive, of this regulation.*

Sec. 9. *If the Department determines that any business tax, or any penalty or interest relating thereto, has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in the records of the Department and certify to the State Board of Examiners the amount collected in excess of the amount legally due and the business or person from which it was collected or by whom paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person or business under this chapter, and the balance refunded to the person or business, or its successors, administrators or executors.*

Sec. 10. 1. *Except as otherwise provided in NRS 360.235 and 360.395:*

(a) No refund may be allowed on a business tax unless a claim for it is filed with the Department within 3 years after the last day of the month following the close of the period for which the overpayment was made.

(b) No credit may be allowed for a business tax after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period.

2. Each claim for a credit or refund of the business tax must:

(a) Be in writing;

(b) Be witnessed by a notary public or contain an acknowledgement that it is signed under penalty of perjury;

(c) State the specific grounds upon which the claim is founded; and

(d) Include documentation supporting the claim.

3. Failure to file a claim for a credit or refund of the business tax within the time prescribed by this section constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Department shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

Sec. 11. 1. *If the overpayment of the business tax is due to an error or omission in a previously filed return, the claim must be in the form of an amended return, as prescribed by the Department, for each period in which the business tax was originally reported. The amended return must specify the original amounts reported, the correct amounts and the differences.*

2. The person requesting the credit or refund of the business tax must be the person, or his authorized representative, who was legally obligated to remit the business tax to the Department.

3. *Upon a determination that an overpayment was made by the taxpayer and upon approval of the State Board of Examiners, the Department shall issue a statement to the taxpayer allowing a credit in the amount of the overpayment unless the taxpayer has specifically requested a refund on the claim. The credit may be applied to any future tax liability of the taxpayer. If the taxpayer requests a refund, the Department shall issue a refund to the taxpayer in an amount which is equal to the amount of the credit owed to the taxpayer at the time the request for a refund is made.*

Sec. 12. *The taxpayer may submit a formal claim for a credit or refund of the business tax, and any information relating thereto, after the 3-year period if, before the end of that period, the taxpayer notifies the Department in writing of his intent to submit the claim. If the Department agrees to extend the period allowed for filing such a claim, the date on which the taxpayer filed the claim shall be deemed to be the date on which the taxpayer notified the Department in writing of his intent to submit the claim.*

Sec. 13. 1. *If the Department fails to mail notice of action on a claim for a credit or refund of the business tax within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Tax Commission within 30 days after the last day of the 6-month period. If the claimant is aggrieved by the decision of the Commission rendered on appeal, he may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.*

2. If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any fee or tax due from the plaintiff.

3. The balance of the judgment must be refunded to the plaintiff.

Sec. 14. NAC 360.480 is hereby amended to read as follows:

360.480 1. ~~[A]~~ *Except as otherwise provided in sections 2 to 6, inclusive, and 7 to 13, inclusive, of this regulation, a* claim for a refund must be accompanied by:

- (a) A statement setting forth the amount of the claim;
- (b) A statement setting forth all grounds upon which the claim is based;
- (c) All evidence the claimant relied upon in determining the claim, including affidavits of any witnesses; and
- (d) Any other information and documentation requested by the Department.

2. A claim for a refund of interest or a penalty that was imposed pursuant to chapter 372 of NRS and that was paid by the taxpayer must be filed within 3 years after the date of payment of the interest or penalty or the deficiency determination, whichever is later.

3. A claim for a refund of interest or a penalty that was not imposed pursuant to chapter 372 of NRS and that was paid by the taxpayer must be filed within 2 years after the date of payment of the penalty or the deficiency determination, whichever is later.