

LCB File No. R174-03

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

(This proposed regulation was adopted as LCB File No. E002-03)

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

AUTHORITY: NRS 360.090, 233B.033, 233B.0613 and Senate Bill 8 of the 20th Special Session

Section 1. *Title 32 of NAC is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 12, inclusive, of this Emergency Regulation.*

Section 2. *As used in this Emergency Regulation, unless the context otherwise requires:*

1. "Annual fee" means the annual fee described in subsection 5 of section 108 of Senate Bill No. 8 of the 20th Special Session.

2. "Average annual wage" means the average annual wage, as computed pursuant to chapter 612 of NRS and rounded to the nearest hundred dollars, for the calendar year immediately preceding the date by which a person must secure a business license or pay an annual fee pursuant to this Emergency Regulation.

3. "Business" means a business described in section 103 of Senate Bill No. 8 of the 20th Special Session.

4. "Business license" means the business license described in subsection 5 of section 108 of Senate Bill No. 8 of the 20th Special Session.

5. "Business license fee" means the fee described in paragraph (d) of subsection 2 of section 108 of Senate Bill No. 8 of the 20th Special Session.

6. "Exemption" means the exemption for a person operating a home-based business, as described in paragraph (c) of subsection 2 of section 103 of Senate Bill No. 8 of the 20th Special Session.

7. "Federal tax year" means any twelve-month period for which a person must report items of income, deduction and credit pursuant to the provisions of the Internal Revenue Code and the regulations promulgated thereunder.

8. "Home-based business" means a business operated by a person who, during any federal tax year in question, owned, leased, rented or licensed no real property or improvements, other than his principal residence, for use in furtherance of the business.

9. "Person" means any person described in subsection 1 of section 103 of Senate Bill No. 8 of the 20th Special Session.

10. "Principal residence" means the principal residence of a person; provided, however, that if the person is an entity described in paragraph (a) of subsection (1) of section 103 of Senate Bill No. 8 of the 20th Special Session, a residence shall be deemed the personal residence of the entity if it is the personal residence of a natural person who is the owner of the entity.

Section 3. *As used in subsection 1 of section 103 of Senate Bill No. 8 of the 20th Special Session, the term “business” does not include:*

- 1. A limited-liability company consisting of a single member, so long as the limited-liability company is disregarded, for federal income tax purposes, as an entity separate from its owner; or,*
- 2. A trust, or any portion thereof, if trust income, deductions and credits are attributable to grantors and others as substantial owners in accordance with the provisions of 26 U.S.C. §§ 671 through 679, inclusive.*

Section 4. *As used in paragraph (b) of subsection 1 of section 103 of Senate Bill No. 8 of the 20th Special Session, the term “natural person” includes:*

- 1. A natural person who is the single member of a limited-liability company described in subsection 1 of section 3 of this section;*
- 2. A natural person who is regarded as a substantial owner of a trust, or a portion thereof, pursuant to the provisions of 26 U.S.C. §§ 671 through 679, inclusive;*
- 3. A married couple jointly engaged in the operation of a going business concern, if the couple jointly reports, on one or more of the forms described in section 107 of Senate Bill No. 8 of the 20th Special Session, items of income, deduction or credit attributable to the going business concern;*
- 4. A married person who reports, either individually or jointly with his or her spouse, on one or more of the forms described in section 107 of Senate Bill No. 8 of the 20th Special Session, items of income, deduction or credit attributable to a going business concern not otherwise described in subsection 3 of this section.*

Section 5. *Except as otherwise provided in section 103 of Senate Bill No. 8 of the 20th Special Session, a person other than a natural person, as described in paragraph (a) of subsection 1 of section 103 of Senate Bill No. 8 of the 20th Special Session, shall be deemed a “business” regardless of its purpose. For example, a limited-liability company or limited partnership formed or created for the limited purpose of estate planning, probate avoidance, or asset protection shall be deemed a business and shall be required to secure a business license in accordance with section 108 of Senate Bill No. 8 of the 20th Special Session.*

Section 6. *In no event shall a natural person be required to secure more than one business license for multiple activities conducted by that natural person and reported to the Internal Revenue Service, for any federal tax year, on two or more of the forms described in section 107 of Senate Bill No. 8 of the 20th Special Session.*

Section 7. *A person shall be required to secure a business license for a home-based business if:*

- 1. The person’s net earnings from the home-based business, for a federal tax year ending on or after December 31, 2003, equaled or exceeded 66 2/3 percent of the average annual wage; or,*
- 2. The person’s business ceased to meet the definition of a home-based business, as set forth in subsection 8 of section 2, at any time during the course of a federal tax year ending on or after December 31, 2003.*

Section 8. *If a person is required to secure a business license in accordance with section 7, the person shall secure the license within 180 days after the last day of the federal tax year during which the person's business failed to qualify for the exemption.*

Section 9. *Sections 7 and 8 shall not be construed to extend a grace period or other form of amnesty to a person who was required to secure a business license for a home-based business pursuant to chapter 364A of NRS, as in effect prior to July 22, 2003.*

Section 10. *Having secured a business license for a home-based business, a person must assess his liability for the annual fee by reference to the federal tax year immediately preceding the date on which the annual fee is due pursuant to subsection 5 of section 108 of Senate Bill No. 8 of the 20th Special Session. The person shall be liable for the annual fee unless:*

1. The person establishes, to the reasonable satisfaction of the Department, that the person's net earning from the home-based business, during the federal tax year in question, were less than 66 2/3 percent of the average annual wage; or,

2. The person timely submits the written statement described in subsection 5 of section 108 of Senate Bill No. 8 of the 20th Special Session.

Section 11. *For purposes of section 10, the Department shall consider a copy of a person's federal tax return, as filed with the Internal Revenue Service, to be satisfactory evidence of the person's net earnings from a home-based business.*

Section 12. *In no event shall a person be entitled to a refund of the business license fee or the annual fee.*