

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R204-03

November 20, 2003

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

AUTHORITY: §§1-19, NRS 360.090 and section 45 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.060).

Section 1. Chapter 363B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, 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 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Commission” means the Nevada Tax Commission.*

Sec. 4. *“Department” means the Department of Taxation.*

Sec. 5. *“Division” means the Employment Security Division of the Department of Employment, Training and Rehabilitation.*

Sec. 6. *“Employer” has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).*

Sec. 7. *“Health care deduction” means the deduction allowed by subsection 4 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).*

Sec. 8. *“Indian tribe” has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).*

Sec. 9. *“Nonprofit organization” has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).*

Sec. 10. *“Political subdivision” has the meaning ascribed to it in section 42 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 141 (NRS 363B.030).*

Sec. 11. *“Self-insured employer” means an employer that provides a program of self-insurance for its employees.*

Sec. 12. *For the purposes of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), the Commission interprets the term:*

1. “Claims” to mean claims for those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

2. “Direct administrative services costs” to mean, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:

(a) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;

(b) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;

(c) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;

(d) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;

(e) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or directly to administer claims; and

(f) The depreciation of property other than medical or office supplies, as computed pursuant to section 13 of this regulation, used for the provision of medical care or the direct administration of claims.

3. “Employees” to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.

4. “Health benefit plan” to mean a health benefit plan that covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

5. *“Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan” to mean any amounts which are:*

(a) Paid by an employer to a Taft-Hartley trust which:

(1) Is formed pursuant to 29 U.S.C. § 186(c)(5); and

(2) Qualifies as an employee welfare benefit plan, as that term is defined in 29 U.S.C. § 1002; and

(b) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code.

Sec. 13. *If a self-insured employer claims the depreciation of property as a direct administrative services cost for purposes of the health care deduction, the employer must compute that depreciation for each calendar quarter, beginning with the calendar quarter in which the property is first placed into service, according to a straight-line method which is based upon:*

1. For tangible personal property other than a mobile home:

(a) Ninety-five percent of the cost of acquisition of the property; and

(b) A useful life determined in accordance with the Personal Property Manual adopted by the Commission for the period in which the property is first placed into service;

2. For a mobile home which has not been converted to real property:

(a) Eighty percent of the cost of acquisition of the mobile home; and

(b) A useful life of 15 years; and

3. For an improvement to real property:

(a) Seventy-five percent of the cost of acquisition of the improvement; and

(b) A useful life of 50 years.

Sec. 14. *The health care deduction does not:*

1. Except as otherwise provided in subsection 6 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.

2. Allow an employer to deduct any sum paid by the employer before October 1, 2003.

Sec. 15. *1. An employer that fails to register with the Division pursuant to NRS 612.535 shall register with the Department for payment of the excise tax imposed by section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).*

2. Each employer shall:

(a) File with the Department each quarterly return required by paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), regardless of whether any tax is due from the employer for that quarter; and

(b) Provide to the Department, on such forms as the Department prescribes, any reports required by the Department for the administration or enforcement of this chapter or sections 40 to 63, inclusive, of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at pages 141 to 146, inclusive (chapter 363B of NRS).

Sec. 16. *1. An employer is not required to file a copy of a report with the Department in the manner provided in subparagraph (2) of paragraph (a) of subsection 3 of section 50 of*

Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), if the Department is able to obtain the information contained in the report pursuant to an agreement with the Division. The Department will notify an employer if the Department is unable to obtain that information pursuant to such an agreement.

2. An employer who is in compliance with section 19 of this regulation shall be deemed to have submitted any proof required by subsection 6 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110).

3. The provisions of this section do not affect any other provision of law requiring an employer to retain or provide any records requested by the Department.

Sec. 17. If an employer files a return pursuant to paragraph (a) of subsection 3 of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), which contains any errors, the employer shall:

1. File with the Department an amended or adjusted return which corrects those errors.

Any corrections to:

(a) The wages reported by the employer must be accompanied by an explanation of those corrections; and

(b) Any health care deduction claimed by the employer must be supported by appropriate documentation and explained to the satisfaction of the Department.

2. Remit to the Department any applicable amount due.

Sec. 18. 1. *An Indian tribe, a nonprofit organization or a political subdivision is exempt from the provisions of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), regardless of whether the Indian tribe, nonprofit organization or political subdivision files a written election pursuant to NRS 612.565 or 612.570.*

2. *Any person who claims to be a nonprofit organization exempt from the provisions of section 50 of Senate Bill No. 8 of the 20th Special Session of the Nevada Legislature, chapter 5, Statutes of Nevada 2003, 20th Special Session, at page 142 (NRS 363B.110), shall, upon the request of the Department:*

(a) If the person does not claim to be an exempt religious organization, provide to the Department a letter from the Internal Revenue Service indicating that the person has qualified as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); or

(b) If the person claims to be an exempt religious organization, provide to the Department such records as the Department deems necessary to demonstrate that the person meets the criteria to qualify as a religious organization pursuant to 26 U.S.C. § 501(c) and any federal regulations relating thereto.

Sec. 19. *Each employer shall maintain and, upon the request of the Department, provide to the Department:*

1. *Copies of any reports filed with or submitted to the Division by the employer.*

2. *Copies of any records required to be maintained by the employer pursuant to NAC 612.020.*

3. *If the employer claims the health care deduction:*

(a) Records describing the nature and amount of any contributions for health insurance or an employee benefit plan made by any employees of the employer.

(b) Proof of any payments for health insurance or a health benefit plan made by the employer.

(c) A copy of any policy, agreement or other document describing:

(1) Any health benefit for which the health care deduction is claimed, including, without limitation, the cost of the benefit; and

(2) The number of employees covered under the applicable health insurance or health benefit plan.

(d) Such records as are required to explain and verify any apportionment of payments between the employer and any of its employees for any pertinent health insurance or health benefit plan.

4. Any other records reasonably requested by the Department if:

(a) The records are available to the employer; and

(b) The disclosure of the records is not prohibited pursuant to NRS 49.225, 449.720, 683A.0873 or 689B.280, or any other state or federal law regarding the confidentiality of the records.