

LCB File No. R205-03

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

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 23, inclusive, of this regulation.

Section 2. *As used in sections 2 to 23, inclusive, of this regulation, 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.*

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

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

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

Section 6. *“Employer” has the meaning ascribed to it in section 4 of Senate Bill No. 8 of the 20th Special Session.*

Section 7. *“Health care deduction” means the deduction authorized by subsection 4 of section 11 of Senate Bill No. 8 of the 20th Special Session.*

Section 8. *“Indian tribe” has the meaning ascribed to it in subsection 1 of section 4 of Senate Bill No. 8 of the 20th Special Session.*

Section 9. *“Nonprofit organization” has the meaning ascribed to it in subsection 2 of section 4 of Senate Bill No. 8 of the 20th Special Session.*

Section 10. *“Political subdivision” has the meaning ascribed to it in subsection 3 of section 4 of Senate Bill No. 8 of the 20th Special Session.*

Section 11. *“Security interest” has the meaning ascribed to it in NRS 104.1201.*

Section 12. *For purposes of sections 2 through 24, inclusive, of Senate Bill No. 8 of the 20th Special Session, the Commission interprets the term:*

1. “Bank” to exclude a federal land credit association, farm credit bank, agricultural credit association or similar institution organized under the provisions of the Farm Credit Act.

2. “Business of lending money, providing credit, [or] securitizing receivables” to exclude a seller of goods or provider of services who provides or extends credit, or retains a security interest in the goods that he sells, only in connection with the financing of his own sales or services.

3. “Claims” to mean claims for health care expenses that would have been deductible by an employee on his individual federal income tax return, pursuant to the provisions of 26

U.S.C § 213 and the regulations promulgated thereunder, if the expenses had been borne directly by the employee, and regardless of whether the expenses exceed any applicable threshold percentage of the employee's adjusted gross income, as computed for purposes of federal income taxation.

4. "Direct administrative services costs" to include only such costs as are borne directly by the employer and reasonably allocated to the direct administration of claims.

(a) Subject to the preceding sentence, the term includes:

(1) Payments for medical or office supplies that will be consumed in the course of providing medical care or directly administering claims;

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

(3) 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;

(4) Payments for repairs to and the maintenance and upkeep of medical or office space used for the provision of medical care or the direct administration of claims.

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

(6) Depreciation attributable to property other than medical or office supplies, if used for the provision of medical care or the direct administration of claims and computed in accordance with section 3 of this chapter.

(b) The costs detailed in paragraph (a) of this subsection are intended to include costs for services provided by an employer in a rural area, if provided at a medical clinic on or adjacent to the worksite, or at a medical clinic in the population center nearest the worksite where the employee resides.

5. "Employees" to include only those employees whose wages are included within the measure of the excise tax, together with their spouses, children and other dependents qualifying for coverage under the terms of a health insurance or health benefit plan.

6. "Financial institution" to exclude a federal land credit association, farm credit bank, agricultural credit association or similar institution organized under the provisions of the Farm Credit Act.

7. "Health benefit plan" to mean a health benefit plan covering only those expenses that would have been deductible by an employee on his individual federal income tax return, pursuant to the provisions of 26 U.S.C § 213 and the regulations promulgated thereunder, if the expenses had been borne directly by the employee, and regardless of whether the expenses exceed any applicable threshold percentage of the employee's adjusted gross income, as computed for purposes of federal income taxation.

8. "Participation in an employee welfare benefit plan" to mean the employer's contributions to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5), if:

(a) The Taft-Hartley trust also qualifies as an "employee welfare benefit plan" as defined in 29 U.S.C. § 1002; and

(b) Any amounts paid the employer to the Taft-Hartley trust are considered by the Internal Revenue Service to be fully tax deductible in accordance with the provisions of the Internal Revenue Code.

Section 13. *For purposes of the health care deduction, if an employer providing a program of self-insurance for its employees claims the depreciation of property as a direct administrative*

services cost, the employer must compute the depreciation on a quarterly basis beginning with the calendar quarter when the property is first placed in service. The employer must compute the depreciation according to a straight-line method, based upon:

- 1. 95 percent of the acquisition cost of tangible personal property other than a mobile home, with the useful life to be determined by reference to the guidelines set forth in the edition of the Personal Property Manual most recently published by the Department of Taxation as of the date when the tangible personal property is first placed in service;*
- 2. 80 percent of the acquisition cost of a mobile home that has not been converted to real property, and a useful life of 15 years;*
- 3. 75 percent of the acquisition cost of an improvement to real property, and a useful life of 50 years.*

Section 14. *An employer may deduct expenses qualifying for the health care deduction only if he pays those expenses on or after October 1, 2003. The employer must deduct the expenses for the quarter in which he paid the expenses.*

Section 15. *In determining whether a person qualifies as a financial institution under any of the subparagraphs to paragraph (b) of subsection 1 of section 5.5 of Senate Bill No. 8 of the 20th Special Session, the Department shall refer to the four-digit industry codes set forth in the Standard Industrial Classification (SIC) Manual, published in 1987 by the Office of Management and Budget of the Office of the President of the United States, or alternatively, to the equivalent codes set forth in the North American Industry Classification System (NAICS), published in 1997 by the Office of Management and Budget of the Office of the President of the United States. If the Division has properly categorized a person under one or more of the SIC or NAICS codes set forth in this section, that person shall be deemed a “financial institution” for purposes of the excise tax on wages. The applicable codes and cross-references are set forth below:*

<i>Section 5.5(1)(b)</i>	<i>SIC Code</i>	<i>NAICS Equivalent(s)</i>
<i>Subparagraph (1)</i>	<i>6211</i>	<i>52311, 52312, or 52391</i>

6211 Security Brokers, Dealers, and Flotation Companies:

Establishments primarily engaged in the purchase, sale, and brokerage of securities; and those, generally known as investment bankers, primarily engaged in originating, underwriting, and distributing issues of securities. Establishments primarily engaged in issuing shares of mutual and money market funds, unit investment trusts, and face amount certificates are classified in Industry Group 672. Establishments primarily engaged in providing investment advice on a contract or fee basis to establishments which deal in financial contracts are classified in Industry 6282.

- Agents for mutual funds*
- Bond dealers and brokers*
- Distributors, security*
- Floor traders, security*
- Investment bankers*

- *Investment certificates, sale of*
- *Investment firm-general brokerage*
- *Mineral leases, dealers in*
- *Mineral royalties, dealers in*
- *Mortgages, buying and selling (rediscounting)*
- *Mutual fund agents*
- *Mutual funds, selling by independent salesperson*
- *Note brokers*
- *Oil and gas lease brokers*
- *Oil royalties, dealers in*
- *Option dealers, stock*
- *Sale of partnership shares in real estate syndicates*
- *Security brokers*
- *Security dealers*
- *Security flotation companies*
- *Security traders*
- *Security underwriters*
- *Stock brokers and dealers*
- *Tax certificate dealers*

Subparagraph (2)

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6211 Security Brokers, Dealers, and Flotation Companies:

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- *Agents for mutual funds*
- *Bond dealers and brokers*
- *Distributors, security*
- *Floor traders, security*
- *Investment bankers*
- *Investment certificates, sale of*
- *Investment firm-general brokerage*
- *Mineral leases, dealers in*
- *Mineral royalties, dealers in*
- *Mortgages, buying and selling (rediscounting)*
- *Mutual fund agents*
- *Mutual funds, selling by independent salesperson*
- *Note brokers*
- *Oil and gas lease brokers*

Establishments primarily engaged in holding or owning securities of companies other than banks, for the sole purpose of exercising some degree of control over the activities of the companies whose securities they hold. Companies holding securities, but which are predominantly operating companies, are classified according to the kind of business operated.

- *Holding companies, except bank*
- *Investment holding companies, except bank*
- *Personal holding companies, except bank*
- *Public utility holding companies*

Subparagraph (9) 6722 52591
6722 Management Investment Offices, Open-End:

Establishments primarily engaged in issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain a provision requiring redemption by the company upon request of the security holder.

- *Management investment funds, open-end*
- *Money market mutual funds*
- *Mutual fund sales on own account*

Subparagraph (10) 6726 52599
6726 Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices:

Establishments primarily engaged in issuing unit investment trusts or face-amount certificates; and establishments primarily engaged in issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain no provision requiring redemption by the company upon request of the security holder. Unit investment trust companies (1) are organized under a trust indenture, contract of custodianship or agency, or similar instrument; (2) do not have a board of directors; and (3) issue only securities redeemable at the request of the security holder, each of which represents an undivided interest in a unit of specified securities, but does not include voting trusts. Face-amount certificates, sometimes referred to as guaranteed face-amount certificates, are essentially obligations of the issuing company to pay a fixed sum at a specified maturity date and usually require periodic payments by the purchaser.

- *Face-amount certificate issuing*
- *Government National Mortgage Association (GNMA) pools*
- *Investment funds, closed-end: management of*
- *Investors' syndicates*
- *Issuing of face-amount installment certificates*
- *Management investment funds, closed-end*
- *Unit investment trusts*

the Division. This section shall not be construed to negate any requirement that the employer retain or produce records requested by the Department.

2. So long as an employer maintains and produces records in compliance within Section 22 of this regulation, the employer shall be deemed to have satisfied his obligation, under subsection 6 of section 11 of Senate Bill No. 8 of the 20th Special Session, to file with each return proof of the amount paid in the calendar quarter that qualifies for the health care deduction.

Section 20. *If an employer has incorrectly reported gross wages or the health care deduction, or has made any other error on the return, the employer must send the Department an amended/adjusted return along with any applicable remittance. Any correction to the health care deduction must be supported by documentation and adequately explained. Any changes to the gross wages must be accompanied by an explanation.*

Section 21. *An Indian tribe, nonprofit organization or political subdivision shall have no obligation to report wages or pay the excise tax pursuant to section 11 of Senate Bill No. 8 of the 20th Special Session, even if it files with the Employment Security Division of the Department of Employment, Training and Rehabilitation, a written election described in NRS 612.565 or NRS 612.570.*

Section 22. *Every employer shall maintain and, at the request of the Department, shall produce the following records:*

- 1. Copies of reports filed with or submitted to the Division..*
- 2. For gross wages, records as required by NAC 612.020.*
- 3. Records describing the nature and amount of any employee contribution to health insurance or a health benefit plan.*
- 4. Proof of payments for health insurance or a health benefit plan.*
- 5. A copy of the policy, agreement or other document describing any health benefit for which a deduction is claimed, including the cost of the benefit, and the number of employees covered under the applicable policy or plan.*
- 6. Records to explain and verify any apportionment between employer and employee payments for health insurance and/or a health benefit plan.*
- 7. Any other records reasonably requested by the Department, provided that:*
 - (a) The records are available to the employer; and*
 - (b) The employer's disclosure of the records will not violate the confidentiality provisions of NRS 49.225, NRS 449.720, NRS 683A.0873, NRS 689B.280, or any other applicable confidentiality provision in state or federal law.*

Section 23.

1. Except as provided in subsection 2. any person claiming an exemption as a nonprofit organization shall, at the request of the Department, produce a letter ruling from the Internal Revenue Service to indicate that the person has qualified as a tax exempt organization under 26 U.S.C. Section 501(c).

2. If a person claims an exemption as a religious organization, the person shall, at the request of the Department, produce such records as may be necessary to demonstrate that the person qualifies as a religious organization according to any criteria set forth in 26 U.S.C. Section 501(c) and the regulations promulgated thereunder.