

LCB File No. E002-03

**EMERGENCY REGULATION OF THE
NEVADA TAX COMMISSION**

(Effective for 120 days after October 9, 2003; Proposed as LCB File No. R174-03)

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.*

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STATEMENT OF EMERGENCY

The Nevada Tax Commission (the "Commission") convened a public meeting on August 4, 2003, for the purpose of considering the adoption of emergency regulations necessary to implement certain provisions of Senate Bill No. 8 of the 20th Special Session ("S.B. 8"). At the public meeting of August 4, 2003, the Commission found that an emergency exists with respect to the implementation of S.B. 8. More specifically, the Commission found that because the process for adopting permanent regulations, as outlined in chapter 233B of NRS, cannot be completed prior to the effective date of many of the new tax laws enacted by S.B. 8, and because it will be necessary to provide guidance to taxpayers concerning their obligations under the new tax laws, there exists an emergency that is appropriately addressed through the enactment of emergency regulations. Accordingly, after holding public workshops on August 21, 2003, September 4, 2003 and September 19, 2003 the Nevada Department of Taxation drafted the foregoing Emergency Regulation, implementing sections 102 to 108, inclusive, of S.B. 8, which became effective on October 1, 2003. Having found the foregoing Emergency Regulation to be a necessary response to the emergency described above, the Commission adopted it at a public meeting on October 6, 2003.

October 6, 2003.

FOR THE COMMISSION:

CHARLES E. CHINNOCK
Executive Director
Nevada Department of Taxation

GOVERNOR'S ENDORSEMENT

I, Governor Kenny C. Guinn, endorse the Nevada Tax Commission's foregoing statement of emergency.

October 9, 2003.

KENNY C. GUINN
Governor

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INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Title 32 to the Nevada Administrative Code.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Department of Taxation solicited public comment at public workshops conducted on August 21, 2003, September 4, 2003 and September 19, 2003. The workshops were held simultaneously, by way of videoconference, at the Nevada Legislative Building and the Grant Sawyer State Office Building. Members of the public responded as follows: They provided written and/or oral presentations at the above scheduled workshops. A summary of the public response may be obtained by calling the Department of Taxation at (775) 687-4896 or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada 89706.

2. The number of persons who:

(a) Attended each hearing: 8/21/03 – 26; 9/4/03 – 14; 9/19/03 - 58

(b) Testified at each hearing: 8/21/03 – 5; 9/4/03 – 4; 9/19/03 - 3

(c) Submitted to the agency written comments: Written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission by various associations and/or groups, the general public, affected businesses and others.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada;

Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

Comments were solicited from affected and interested businesses and persons by the notices set forth above, by direct mail to all county assessors, and by direct mail to the approximately 250 interested businesses and persons on the Department of Taxation's mailing list.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The emergency regulation has been revised and supplemented several times in response to concerns and questions posed by interested parties, including members of the public, employees of the Nevada Department of Taxation, and members of the Nevada Tax Commission.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:
(a) Both adverse and beneficial effects; and
(b) Both immediate and long-term effects.

The emergency regulation merely implements sections 101 to 108, inclusive, of Senate Bill No. 8 of the 20th Special Session. It has no economic impact independent of the economic impact created by the subject legislation. The emergency regulation provides clarification as to who must secure a business license, when, and under what circumstances. The beneficial effect of the emergency regulation, both immediate and long-term, is that it provides taxpayer's with specific guidance concerning their obligations to secure business licenses. The Department of Taxation foresees no adverse effects.

6. The estimated cost to the agency for enforcement of the proposed regulation.

Zero. As noted above, the emergency regulation merely implements new legislation. It is the legislation, not the regulation, which creates a financial burden. The cost of enforcing the emergency regulation is negligible. In fact, the Department anticipates that the emergency regulation will make the enforcement of the subject legislation less costly.

7. A description of any regulations of the state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The emergency regulation implements brand new legislation. It does not duplicate or overlap with any other regulations.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

Not applicable.

9. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

Not applicable.