

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R093-04

June 9, 2004

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

AUTHORITY: §§1-16, NRS 360.090 and 360.250.

A REGULATION relating to taxation; revising provisions governing the taxation of possessory interests in real and personal property; and providing other matters properly relating thereto.

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 16, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Contract” means a lease, sublease, assignment, deed, conveyance, permit, authorization, agreement, contract or other instrument that creates a possessory interest.*

Sec. 4. *“Owner” means a natural person, association, partnership, corporation, governmental agency, public entity or quasi-public entity that holds an interest in real or personal property which for any reason is exempt from taxation.*

Sec. 5. *“Possession” means actual occupation that results in the receipt of more than incidental benefit from the use of otherwise tax-exempt property.*

Sec. 6. *“Possessor” means a natural person, association, partnership or corporation that holds a possessory interest.*

Sec. 7. *“Possessory interest” means a leasehold interest, possessory interest or beneficial interest in, or a right to the beneficial use of, real or personal property, where the interest or use is subject to taxation pursuant to NRS 361.157 or 361.159.*

Sec. 8. *The county assessor shall consider evidence of whether the possession of, claim to or right to the possession of property is independent for the purpose of NRS 361.2275, including, without limitation, whether:*

1. The possessor has the authority to manage or operate the property without the immediate, continuous and hands-on direction of the owner.

2. The possessor has the authority to manage or operate the property in a manner that is advantageous and convenient in performing the contracts and maximizing the profits of the possessor.

3. The possessor is an independent contractor using the property pursuant to a contract with the owner.

4. Interference by the owner with the use of the property is prohibited. Instances in which the owner may interfere with some uses of the property but not others must be considered by the county assessor on a case-by-case basis.

5. The limitations placed on the possessor’s use of the property are of the type that an owner would likely place on himself, given the nature of the property.

Sec. 9. *The county assessor shall consider evidence of whether the possession of, claim to or right to the possession of property is durable for the purpose of NRS 361.2275, including, without limitation:*

1. Whether the duration of the period of use is sufficient for the possessor of the property to realize a private benefit.

2. In the event of seasonal use, whether:

(a) The possessor of the property uses the property to substantially the same extent as would an owner engaged in the same activity;

(b) There is a history on the lien date of recurring use by the present or former possessors making similar use of the property; or

(c) The possessor made a contribution to the value of the property by way of investment on or near the property, even if actual possession is infrequent.

Sec. 10. 1. *The county assessor shall consider evidence of whether the possession of, claim to or right to the possession of property is exclusive for the purpose of NRS 361.2275, including, without limitation, whether:*

(a) The possessor has the right to sole occupancy or use of the property or improvements;

(b) The possessor has the right to occupancy or use of the property or improvements as a cotenant;

(c) There exists a right to concurrent use of the property or improvements by a possessor who has a primary or prevailing right to use the property or improvements at any time;

(d) There exists a right to concurrent use of the property or improvements by persons who make qualitatively different uses of the property or improvements;

(e) There exists a right to concurrent use of the property or improvements by persons who engage in similar uses that diminish the quantity or quality of the property or improvements;
or

(f) There exists a right to concurrent use of the property or improvements that does not diminish the quantity or quality of the property or improvements, if the number of grants of rights to concurrent use is restricted.

2. The presence of occasional trespassers or occasional interfering uses is not sufficient under any circumstances to make nonexclusive a use, or a right or claim to a use, that is otherwise exclusive for the purposes of taxation.

Sec. 11. *1. The county assessor may request that an owner of real or personal property which is exempt from taxation provide the county assessor with a list that sets forth each possessory interest in the property.*

2. Such a list must include, without limitation:

(a) The name and contact information of the owner of the property and each holder of a possessory interest in the property;

(b) A legal description of the real property that is subject to the possessory interest or, if the legal description is not available, a description of the general location of such property;

(c) A general description of the type or class of personal property that is subject to the possessory interest;

(d) The nature of the instrument that conveyed the possessory interest;

(e) The effective date and duration of the contract that created the possessory interest;

(f) The amount of any lease payment or payment for services that is set forth in the contract; and

(g) The manner in which the property is being used.

3. The county assessor may request that a possessor of real or personal property that is otherwise exempt from taxation provide to the county assessor a list of each natural person, association, partnership, corporation or other entity which holds a possessory interest in the property pursuant to a subcontract with the possessor.

4. The county assessor may require any party to a contract that creates a possessory interest to provide a copy of the contract to the county assessor.

Sec. 12. 1. A taxable possessory interest exists whenever a possessor has an exclusive right to a beneficial use of real or personal property that is otherwise exempt from taxation. Such a taxable possessory interest exists regardless of whether a document establishes a right to possession, and may be created by a verbal agreement.

2. A document may establish a right to possession regardless of how the document is denominated, including, without limitation, a lease, an agreement or any other contract.

Sec. 13. 1. The county assessor shall determine and identify the land area necessary to, or included in, the operation or use of a taxable possessory interest.

2. In determining pursuant to subsection 3 of NRS 361.227 the taxable value of a possessory interest in land that is otherwise exempt from taxation:

(a) The taxable value of the land must be determined as if the land were not exempt from taxation; and

(b) If the reductions required by paragraphs (a) and (b) of subsection 3 of NRS 361.227 are applicable, the taxable value so determined must be adjusted by multiplying that taxable value by the percentage use and time factors described in those paragraphs.

3. As an example of the application of this section, assume that, as determined pursuant to paragraph (a) of subsection 2, the taxable value of a vacant lot owned by a city is \$35,000. The lot is 10,000 square feet in size and a company leases the front 5,000 square feet of the lot from the city. The lease provides for a term of possession of 7 months, from June 1 to January 1. The taxable value of the possessory interest of the company in the land is \$10,150, calculated as follows:

(a) First, determine the percentage of the land that is used or leased. In this example, the calculation is 5,000 square feet/10,000 square feet = .5, or 50 percent of the land is used or leased.

(b) Second, determine the taxable value of the portion of the land that is used or leased. In this example, the calculation is \$35,000 x 50 percent = \$17,500.

(c) Third, determine the percentage of time that the land is used or leased. In this example, the calculation is 7 months/12 months = .5833, or 58 percent of the time the land is used or leased.

(d) Fourth, adjust the taxable value of the portion of the land that is used or leased by the percentage of time that it is used or leased. In this example, the calculation is \$17,500 x 58 percent = \$10,150.

Sec. 14. 1. *In determining pursuant to subsection 3 of NRS 361.227 the taxable value of a possessory interest in an improvement or personal property that is otherwise exempt from taxation:*

(a) The taxable value of the improvement or personal property must be determined as if the improvement or personal property were not exempt from taxation; and

(b) If the reductions required by paragraphs (a) and (b) of subsection 3 of NRS 361.227 are applicable, the taxable value so determined must be adjusted by multiplying that taxable value by the percentage use and time factors described in those paragraphs.

2. *As an example of the application of this section with regard to an improvement, assume that, as determined pursuant to paragraph (a) of subsection 1, the taxable value of a building which is owned by a county and which contains 50,000 square feet is \$1,000,000. A company leases 25,000 square feet of the building from the county for 6 months during the year. The*

taxable value of the possessory interest of the company in the building is \$250,000, calculated as follows:

(a) First, determine the percentage of the building that is used or leased. In this example, the calculation is 25,000 square feet/50,000 square feet = .5, or 50 percent of the building is used or leased.

(b) Second, determine the taxable value of the portion of the building that is used or leased. In this example, the calculation is \$1,000,000 x 50 percent = \$500,000.

(c) Third, determine the percentage of time that the building is used or leased. In this example, the calculation is 6 months/12 months = .5, or 50 percent of the time the building is used or leased.

(d) Fourth, adjust the taxable value of the portion of the building that is used or leased by the percentage of time that it is used or leased. In this example, the calculation is \$500,000 x 50 percent = \$250,000.

3. As an example of the application of this section with regard to personal property, assume that, as determined pursuant to paragraph (a) of subsection 1, the taxable value of personal property owned by a county and leased to a company is \$100,000. The lease will expire 3 months after the lien date. The taxable value of the possessory interest of the company in the personal property is \$25,000, calculated as follows:

(a) First, determine the percentage of time that the personal property is used or leased. In this example, the calculation is 3 months/12 months = .25, or 25 percent of the time the personal property is used or leased.

(b) Second, adjust the taxable value of the personal property by the percentage of time it is leased. In this example, the calculation is \$100,000 x 25 percent = \$25,000.

Sec. 15. *If there exist concurrent possessory interests in the same property, the county assessor shall apportion the taxable value as determined pursuant to sections 13 and 14 of this regulation among the possessors by determining the percentage of use of each possessor.*

Sec. 16. *If a determination is made in accordance with subsection 5 of NRS 361.227 as to whether the taxable value of a possessory interest in property exceeds its full cash value, the county assessor shall ensure that the consideration of the methods of valuation set forth in paragraphs (a), (b) and (c) of subsection 5 of NRS 361.227 reflects only the value of the possessory interest in the property.*