

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R138-04**

Effective August 11, 2004

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

AUTHORITY: §§1-4, NRS 360.090, 360.093 and 360.419.

A REGULATION relating to taxation; establishing certain circumstances under which penalties and interest may be waived or reduced for the late payment of taxes; and providing other matters properly relating thereto.

**Section 1.** Chapter 360 of NAC is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in this section and for the purposes of NRS 360.419:*

*(a) A person's failure to make a timely return or payment of a tax imposed pursuant to NRS 363A.130, 363B.110 or 368A.200 shall be deemed to be the result of circumstances beyond his control and occurring despite the exercise of ordinary care and without intent if the person files any required return and remits the tax on or before December 31, 2004.*

*(b) A person's failure to make a timely return or payment of a tax imposed pursuant to NRS 372.185 shall be deemed to be the result of circumstances beyond his control and occurring despite the exercise of ordinary care and without intent if:*

*(1) Pursuant to subsection 2 of NRS 372.220, the person is required for the first time to register with the Department; and*

*(2) The person files any required return and remits the tax on or before December 31, 2004.*

*2. Except as otherwise provided in this section and for the purposes of subsection 5 of NRS 360.780, a person shall be deemed to have submitted the annual fee required to be paid pursuant to that section in a timely manner if the person files any required return and remits the fee on or before December 31, 2004.*

*3. The provisions of this section:*

*(a) Apply only to taxes and fees that are due and payable before January 1, 2005.*

*(b) Do not apply:*

*(1) If the Department determines that the failure to make a timely return or payment of a tax or fee imposed pursuant to the provisions of NRS 360.780, 363A.130, 363B.110, 368A.200 or 372.185 is due to negligence, an intentional disregard of any of those provisions, fraud or an intent to evade the payment of the tax or fee.*

*(2) To a taxpayer who has entered into a settlement agreement with the Department that has been approved by the Commission.*

**Sec. 2.** NAC 360.400 is hereby amended to read as follows:

360.400 1. Except as otherwise provided in subsection 7, the Department may waive or reduce the penalty or interest for a deficiency for which a notice of a deficiency determination has been issued by the Department pursuant to NRS 360.350, if the Department finds that the deficiency was caused by circumstances beyond the control of the taxpayer against whom the deficiency determination was made or his agent and occurred despite the exercise of ordinary care and without intent.

2. Such a taxpayer or his agent may request a waiver or reduction of the penalty or interest for the deficiency by filing a statement with the Department that contains the facts underlying the circumstances that caused the deficiency. The Department shall treat such a statement in the

same manner provided in chapter 360 of NRS for a petition for redetermination. Except as otherwise provided in this subsection, the statement must be filed in writing with the Department within 45 days after the date on which the taxpayer is served with a notice of a deficiency determination for the deficiency pursuant to NRS 360.350. If the notice of the deficiency determination is served by mail, the period for filing a statement pursuant to this subsection will be extended by 3 days. The statement must be witnessed by a notary public or contain an acknowledgment that it is signed under penalty of perjury.

3. If a taxpayer has filed a petition for redetermination, he may request in writing a waiver or reduction of the penalty or interest on the deficiency any time before a final decision is issued on the petition for redetermination.

4. In determining, for the purposes of subsection 1, whether or not the circumstances which caused the deficiency were beyond the control of the taxpayer against whom the deficiency determination was made or his agent and occurred despite the exercise of ordinary care and without intent, the Department shall consider *the provisions of section 1 of this regulation and any* evidence which shows that the deficiency was caused by circumstances that were not directly related to the actions of the taxpayer or his agent, including, without limitation, fire, earthquake, flood or other acts of God, theft, the death or serious illness of the taxpayer or his agent or a member of the immediate family of the taxpayer, erroneous written information provided to the taxpayer or his agent by the Department and the misaddressed but timely mailing of the return or payment. The existence of an event described in this subsection does not create a conclusive presumption of eligibility for a waiver or reduction of the penalty or interest on a deficiency pursuant to this section.

5. If the assessment of a tax is accompanied by the assessment of a penalty based upon negligence, fraud or intent to evade the tax pursuant to NRS 360.330 or 360.340, the Department shall not consider a request to waive or reduce the penalty or interest on the deficiency pursuant to this section unless the Department determines that there is insufficient evidence to show negligence, fraud or intent to evade the tax.

6. If the Department denies a request by a taxpayer for a waiver or reduction of a penalty or interest on a deficiency pursuant to this section, the taxpayer may appeal the decision by filing a written notice of appeal with the Department within 30 days after the taxpayer has been served with the decision of the Department denying the request. Upon receipt of such a notice of appeal, the Department shall schedule a hearing for the appeal. The taxpayer must be given 10 days' notice of the time and place of the hearing. The procedures set forth in chapter 360 of NRS for a hearing on a petition for redetermination apply to a hearing on an appeal of the denial of a request for a waiver or reduction of a penalty or interest on a deficiency.

7. The provisions of this section do not apply to a taxpayer who has entered into a settlement agreement with the Department that has been approved by the Commission.

**Sec. 3.** NAC 360.402 is hereby amended to read as follows:

360.402 1. Except as otherwise provided in subsection 4, if a taxpayer has made a late payment on a monthly, quarterly or annual return that he filed with the Department for a tax imposed pursuant to chapter [361A](#), 362, ~~[364A](#)~~, [363A](#), [363B](#), [368A](#), 369, 370, 372, 372A, 374, [375A](#), 375B, 376A, 377 or 377A of NRS and the Department has not issued a notice of a deficiency determination pursuant to NRS 360.350 relating to that return:

(a) The Department shall waive the penalty and interest for the late payment if:

(1) The total penalty and interest for the late payment is \$5 or less; or

(2) The late payment:

(I) Is the only late payment for that tax that the taxpayer has submitted in the 12 months immediately preceding the period for which the late payment was made if the tax was imposed pursuant to chapter ~~[364A,]~~ 361A, 363A, 363B, 368A, 369, 370, 372, 372A, 374, 375A, 375B, 376A, 377 or 377A of NRS, or in the 24 months immediately preceding the period for which the late payment was made if the tax was imposed pursuant to chapter 362 of NRS;

(II) Was received by the Department within 45 days after the date on which the payment was due; and

(III) Is determined by the Department to have been caused by circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

(b) The Department shall reduce the penalty and interest on the late payment by the amount set forth in subsection 2 if:

(1) The taxpayer had made only one other late payment for the same tax during the 12 months immediately preceding the period for which the most recent late payment was made if the tax was imposed pursuant to chapter ~~[364A,]~~ 361A, 363A, 363B, 368A, 369, 370, 372, 372A, 374, 375A, 375B, 376A, 377 or 377A of NRS, or during the 24 months immediately preceding the period for which the most recent late payment was made if the tax was imposed pursuant to chapter 362 of NRS; and

(2) The Department determines that the most recent late payment was made as a result of circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

(c) The Department may waive the penalty and interest on the late payment if the Department determines that the late payment was made as a result of circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

2. If the Department must reduce the penalty and interest on a late payment pursuant to paragraph (b) of subsection 1:

(a) The penalty assessment for the late payment will be not more than:

(1) Two percent of the tax if the payment is not more than 2 days late.

(2) Four percent of the tax if the payment is not more than 5 days late.

(3) Six percent of the tax if the payment is not more than 10 days late.

(4) Eight percent of the tax if the payment is not more than 15 days late.

(b) The interest on the late payment will be reduced by the rate of reduction of the penalty applied by the Department pursuant to paragraph (a).

3. In determining, for the purposes of subsection 1, whether or not the circumstances which caused the late payment were beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent, the Department shall consider *the provisions of section 1 of this regulation and any* evidence which shows that the late payment was caused by circumstances that were not directly related to the actions of the taxpayer or his agent, including, without limitation, fire, earthquake, flood or other acts of God, theft, the death or serious illness of the taxpayer or his agent or a member of the immediate family of the taxpayer, an error or the misconduct of an employee of the taxpayer, erroneous written information provided to the taxpayer or his agent by the Department and the misaddressed but timely mailing of the return or payment. The existence of an event described in this subsection

does not create a conclusive presumption of eligibility for a waiver or reduction of the penalty or interest on a late payment pursuant to this section.

4. The provisions of this section do not apply to a taxpayer who has entered into a settlement agreement with the Department that has been approved by the Commission.

**Sec. 4.** NAC 360.405 is hereby amended to read as follows:

360.405 1. Except as otherwise provided in subsection 2, the Department may relieve a person who has not paid a tax or fee imposed pursuant to ~~chapter 364A of NRS,~~ NRS 370.440 to 370.503, inclusive, chapters 372 or 374 of NRS or NRS 444A.090 or 482.313 of all or part of the penalties and interest imposed pursuant to NRS 360.300, 360.330 or 360.417 with regard to the unpaid tax or fee if:

(a) The person failed to pay the unpaid tax or fee for a reason other than fraud or intentional evasion of the payment of the unpaid tax or fee;

(b) Not earlier than February 1, 2002, and not later than June 30, 2002, the person files with the Department a request for relief pursuant to this section;

(c) The person registers pursuant to NRS 372.220 or NAC 444A.041, if required;

(d) The person obtains a license pursuant to NRS ~~364A.130 or~~ 370.445, if required;

(e) The person pays in full the fee for any permit or license required for any business in which he engages that is related to the unpaid tax or fee;

(f) The person pays in full the unpaid tax or fee; and

(g) The Commission authorizes the Department to relieve the person of the penalties and interest.

2. The Department may not, pursuant to subsection 1, relieve the person of any interest that accrues or penalties that are imposed on or after July 1, 2002, on any portion of the unpaid tax or fee that remains unpaid on or after July 1, 2002.

3. A person who requests or receives relief pursuant to this section may be selected for an audit and audited by the Department in the same manner as a person who does not request or receive relief pursuant to this section.

4. The limitations set forth in NRS 360.355 apply to taxes and fees paid pursuant to this section.



**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R138-04**

The Nevada Tax Commission adopted regulations assigned LCB File No. R138-04 which pertain to chapter 360 of the Nevada Administrative Code on July 6, 2004.

**Notice date:** 6/4/2004 (Amended 6/21/2004)

**Date of adoption by agency:** 7/6/2004

**Hearing date:** 7/6/2004

**Filing date:** 8/11/2004

**INFORMATIONAL STATEMENT**

**1. A description of how public comment was solicited, a summary of public response, and an explanation of 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.

The hearing was held on July 6, 2004 at the Nevada Department of Health, Building B, South Conference Room, 1001 East 9<sup>th</sup> Street, Reno, Nevada and video conference to 1161 S. Valley View, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada 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.

The proposed regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on July 1, 2004. Thus, the proposed regulation, for practical purposes, was discussed at one workshop and has been heard and considered at one public hearing of the Nevada Tax Commission.

**2. The number of persons who:**

**(a) Attended the hearing: 31**

**(b) Testified at the hearing: 1**

**(c) Submitted to the Tax Commission written comments:** No written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission. However, the Nevada Taxpayer's Association did verbally support the language contained within the regulation.

**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.**

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 240 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.**

Section 3, paragraph 1, paragraph 1(a)(2)(I) and paragraph 1(b)(1) of the proposed regulation was slightly modified prior to adoption, due to an issue raised by the Department of Taxation. The modification was to insert a reference to NRS Chapter 368A. The remaining sections of the proposed regulation were not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation, the Attorney General's Office or Tax Commission members, and the Tax Commission believed no changes other than those made were necessary.

**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.**

**(a) Adverse and beneficial effects.**

The proposed regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public. There will be some beneficial economic effects to taxpayers that qualify for the waiver of penalty and interest. Those anticipated benefits are not quantifiable at this time.

**(b) Immediate and long-term effects.**

Same as #5(a) above.

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

The proposed regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some minor initial administrative costs for the Department, which are not quantifiable at this time.

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

The proposed regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

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

There are no known federal regulations pertaining to the Department's waiver of penalty and interest procedures, which is the subject of the proposed regulation.

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

The proposed regulation does not provide a new fee or increase an existing fee.