

Chapter 360A of NAC

LCB File No. T026-04

**ADOPTED TEMPORARY REGULATION OF THE
DEPARTMENT OF MOTOR VEHICLES**

Filed with the Secretary of State on December 15, 2004

Authority: NRS 360A.020

Section 1. *Chapter 360A of NAC is hereby established by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.*

Sec. 2. *As used in this chapter, unless the context otherwise requires:*

1. *“Deficiency determination” means a delinquent amount due determined to be owed to the department pursuant to NRS 360A.100.*

2. *“Department” means the department of motor vehicles.*

3. *“Good cause” means circumstances beyond the control of the taxpayer and occurred despite the exercise of ordinary care and without willful neglect, including, without limitation:*

(a) *Fire;*

(b) *Earthquake;*

(c) *Flood;*

(d) *Other acts of God;*

(e) *Theft; or*

(f) *Death or serious illness of the taxpayer or his agent or a member of the family of the taxpayer.*

4. *“Responsible person” means:*

(a) *An officer or employee of a corporation; or*

(b) *A member or employee of a partnership or limited-liability company,*

whose job or duty it is to collect, account for or pay to the Department the tax imposed by chapter 365, 366 or 373 of NRS, or NRS 590.120 or 590.840.

5. *“Taxpayer” means:*

(a) *A supplier as defined in NRS 365.135;*

(b) *A dealer as defined in NRS 365.105;*

(c) *A special fuel supplier as defined in NRS 366.070; and*

(d) *A special fuel dealer as defined in NRS 366.062.*

Sec. 3. *1. An application for a waiver or reduction of penalty or interest pursuant to NRS 360A.070 for a delinquent payment or amount due must be filed in writing with the Department within 30 days after the date on which the tax is paid or the deficiency determination is served to the taxpayer and must set forth the circumstances that caused the*

late payment or amount due. 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.

2. The department may waive or reduce the penalty or interest for good cause.

3. If the Department finds that the delinquent payment or amount due was proximately caused by fire, earthquake, flood, or other acts of God and the tax was paid as soon as reasonably possible thereafter, the penalty imposed on the delinquent payment will be waived.

4. If the Department finds that the cause of a delinquent payment or amount due was proximately caused by theft, death or serious illness of the taxpayer or his agent or a member of the family of the taxpayer, or other similar cause which was not directly related to the actions of the person or his agent required to make the payment, and that payment was made as soon as reasonably possible thereafter:

(a) The penalty for the delinquent payment will be:

(1) Not more than 2 percent of the tax or the amount of the tax if the payment is not more than 2 days late;

(2) Not more than 4 percent of the tax or the amount of the tax if the payment is not more than 5 days late;

(3) Not more than 6 percent of the tax or the amount of the tax if the payment is not more than 10 days late;

(4) Not more than 8 percent of the tax or the amount of the tax if the payment is less than 15 days late; and

(5) Not more than 10 percent of the tax or the amount of the tax if the payment is more than 15 days late.

(b) The interest on the delinquent payment will be reduced by an amount equal to the rate of reduction to the penalty applied by the Department in accordance with paragraph (a).

(c) If the total penalty and interest after any reduction calculated pursuant to paragraphs (a) and (b) equals \$5 or less, the penalty and interest will be waived completely.

5. The Department will not consider an application to waive or reduce a penalty or interest, or both, filed pursuant to NRS 360A.070 if the assessment of the tax is accompanied by the assessment of a penalty based upon negligence, willful neglect, fraud or intent to evade the tax that has become final.

6. The provisions of this section do not apply to a taxpayer who has entered into a settlement agreement with the department.

Sec. 4. 1. *Subject to the approval of the director or their designee, the department may enter into an agreement with a taxpayer, upon the request of the taxpayer, that allows the taxpayer to pay taxes, interest and penalties in installments if:*

(a) The taxpayer submits accurate and complete information sufficient to allow the department to determine whether to enter into the agreement; and

(b) The taxpayer agrees in writing that he will comply with all the provisions of the laws and regulations of the department during the period in which the agreement is in effect, including, without limitation, reporting and payment requirements.

2. The department may deny a request to enter into an agreement pursuant to subsection 1 if the taxpayer has not complied with a previous agreement with the department to pay taxes, interest and penalties in installments.

Sec. 5. *An agreement to pay taxes, interest and penalties in installments pursuant to Section 4 must:*

- 1. Be in writing;*
- 2. Except as otherwise provided in this paragraph, be accompanied by a personal guaranty by two responsible persons in their individual capacities. If there is only one responsible person, the agreement must contain the personal guaranty of that person in his individual capacity;*
- 3. Be accompanied by the initial payment as specified by the terms of the agreement;*
- 4. Contain a provision that payments must be paid by cashier's check, Electronic Funds Transfer (EFT), traveler's check, money order or cash; and*
- 5. Contain a provision whereby the taxpayer recognizes that he is agreeing to waive any right to a hearing.*

Sec. 6. *1. If the department determines that taxes or fees are due, the department shall issue to the taxpayer a notice of the deficiency determination.*

2. If the taxpayer wishes to dispute the findings of the determination of taxes or fees, the taxpayer must petition the department for a redetermination within 30 days after he is served with the notice of the deficiency determination. A petition for redetermination must be submitted:

- (a) On a form prescribed by the department for filing a petition for redetermination; or*
- (b) In the form of a letter which contains sufficient information to give notice to the department that the taxpayer is disputing the deficiency determination. The letter must include, without limitation, the name of the taxpayer, the account number assigned to the taxpayer by the department, and the amount of the tax, interest or penalty in dispute.*

3. In addition to the prescribed form or letter in this section, the taxpayer must include:

- (a) Any books, records, or other evidence which support the petition;*
- (b) Payment of the non-contested amount; and*
- (c) May include a request for an oral hearing.*

3. The director or designee may grant an extension for the filing of a petition for redetermination if the request for an extension is made in writing to the department and the director or designee finds that the petition for redetermination was not filed or was filed late despite the exercise of ordinary care or with good cause.

4. The taxpayer may, at any time, withdraw his petition for redetermination by submitting a written request, in the form of a letter, to the department.

5. The director or designee will not grant an extension for the filing of a petition for redetermination if the request is:

- (a) Not received within 30 days after being served with the notice of determination;*
- (b) Not received with payment of the non-contested amount; or*
- (c) Not received with any books and records and other evidence which support the petition.*

Sec. 7. *1. If, after the Department has considered a petition for redetermination and notified the taxpayer of the result of the petition for redetermination, the taxpayer may request a hearing pursuant to NAC 481.140 through 481.355, inclusive:*

2. A request for hearing must be submitted within 30 days after he is served with the notice of the redetermination. If the notice of redetermination is served by mail, the period for filing a request for hearing pursuant to this section will be extended by 3 days.

Sec. 8. *1. If a dishonored check was not honored through the fault or error of the banking institution and the taxpayer can provide sufficient evidence to this effect, the payment will be considered made on the date tendered.*

2. The director or designee may waive the charge imposed by NRS 353C.115 upon determining that a waiver is warranted by the circumstances.

Sec. 9. *For the purposes of NRS 360A.240 and 360A.250, days will be defined as business days.*

Sec. 10. *If a taxpayer has been served with a determination pursuant to NRS 360A.230 and has requested a redetermination, the taxpayer must deposit with the department security in an amount equivalent to the amount due on the determination. Security shall be in the form of:*

1. A surety bond;

2. A cash payment; or

3. Other security as provided by NRS 100.065.

Sec. 11. *Any person who engages in business without having the appropriate license required by NRS 365 or 366 will be given 10 business days' notice in writing of the day and time when the department will lock and seal their business. The notice will be served personally or by mail in the manner prescribed in NRS 360A.030.*

Sec. 12. NAC 366.104 is hereby repealed.

NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T026-04

The Department of Motor Vehicles adopted temporary regulations assigned LCB File No. T026-04 which pertain to chapter 360A of the Nevada Administrative Code

INFORMATIONAL STATEMENT

The Department of Motor Vehicles noticed and held public workshops in Carson City on November 29, 2004 and in Las Vegas on December 1, 2004. Public Hearings were held in Carson City on December 13, 2004 and December 14, 2004 in Las Vegas. The purpose of the workshops and hearings were to solicit comments and opinion on proposed regulation changes related reporting of taxes and fees on fuels.

Comments were solicited from affected businesses by posting on November 4, 2004, at the Nevada State Library and Archives and each office of the Department of Motor Vehicles. In counties where the Department does not maintain an office, the notice was posted at the main office of the public library. Additionally, notices were provided to associations whose members would be affected by these regulations.

No one was present at the public workshops or hearings in Carson City. In Las Vegas Ronald and Amy Levine of the Nevada Motor Transport Association attended the workshop in Las Vegas. Neither testified at the workshop. There was no one in attendance at the Public Hearings in Carson City or Reno. The Department did not receive any written comments.

The Department recommends adopting the regulation as submitted with no changes.

There are no adverse or beneficial economic effects of this regulation to the Department, local authorities or the public.

There is no additional cost to the agency to implement the regulations.

There are no other state or federal regulations that the proposed regulations duplicate or overlap.