

**REVISED PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R018-05

September 29, 2005

(Note: This draft replaces the one incorrectly posted on September 30, 2005)

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

AUTHORITY: §§1 and 2, NRS 360.090, 360.093, 360.417 and 360.419; §§3-6; NRS 360.090, 360.093 and 360.419.

A REGULATION relating to taxation; revising the provisions relating to a waiver or reduction of the penalty or interest assessed for the late payment of certain taxes or fees; and providing other matters properly relating thereto.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5 inclusive, of this regulation.

Sec. 2. *The penalty imposed pursuant to NRS 360.417 for the late payment of tax provided for in chapter 362, 363A, 363B, 369, 370, 372, 372A, 377, 377A, 444A or 585 of NRS or any fee provided for in NRS 482.313 must be in the amount of:*

- 1. If the payment is not more than 10 days late, 2 percent of the amount of the tax or fee due.*
- 2. If the payment is more than 10 days late but not more than 15 days late, 4 percent of the amount of the tax or fee due.*
- 3. If the payment is more than 15 days late but not more than 20 days late, 6 percent of the amount of the tax or fee due.*

4. *If the payment is more than 20 days late but not more than 30 days late, 8 percent of the amount of the tax or fee due.*

5. *If the payment is more than 30 days late, 10 percent of the amount of the tax or fee due.*

Sec. 3. 1. *The Department shall waive or reduce a penalty or interest, or both, for a late payment if the total penalty and interest for the late payment is \$15 or less.*

2. *The Department may waive or reduce a penalty or interest, or both, for a late payment if the late payment 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.*

3. *In determining whether to waive or reduce the penalty or interest, or both, for a late payment pursuant to subsection 2, the Department may consider:*

(a) *The history of compliance and timely payment of the taxpayer;*

(b) *The weight and sufficiency of the evidence supporting the request of the taxpayer to waive or reduce the penalty or interest, or both, for the late payment;*

(c) *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:*

(1) *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;*

(2) *An error or the misconduct of an employee of the taxpayer;*

(3) *Erroneous written information provided to the taxpayer or his agent by the Department; and*

(4) *The misaddressed but timely mailing of the return or payment; and*

(d) Any other factor deemed by the Department to be relevant.

Sec. 4. 1. Except as otherwise provided in section 5 of this regulation, a taxpayer or his agent may request the waiver or reduction of the penalty or interest, or both, by submitting to the Department a written statement which sets forth the facts and circumstances surrounding the failure of the taxpayer to make the payment in a timely manner.

2. The Department shall not consider a request made pursuant to subsection 1 unless the taxpayer pays in full the tax or fee upon which the interest or penalty is assessed within 120 days after the date on which the payment is due.

3. For the purposes of this section, “the date on which the payment was due” is the date that the determination of a deficiency made by the Department regarding the payment becomes final pursuant to the provisions of NRS 360.300 to 360.400, inclusive.

Sec. 5. 1. If a notice of a deficiency determination has been issued by the Department pursuant to NRS 360.350, a taxpayer who files a petition for redetermination pursuant to NRS 360.360 may:

(a) Submit, with the petition for redetermination, a written request for the waiver or reduction of the penalty or interest, or both; or

(b) Request before the conclusion of the hearing on the petition for redetermination conducted pursuant to NRS 360.370 that the hearing officer waive or reduce the penalty or interest, or both.

2. A request submitted pursuant to subsection 1 shall not be deemed to be an admission on the part of the taxpayer regarding the correctness of the tax or fee.

3. If a taxpayer requests, pursuant to paragraph (a) of subsection 1, the waiver or reduction of the penalty or interest, or both, the Director shall determine whether a hearing on the request is required. If the Director determines that:

(a) A hearing on the request is not required, the Director shall make a determination on the request.

(b) A hearing on the request is required, the Director shall refer the request to a hearing officer for a hearing conducted in accordance with NAC 360.095 to 360.170, inclusive.

4. If a taxpayer requests, pursuant to paragraph (b) of subsection 1, the waiver or reduction of the penalty or interest, or both, the hearing officer shall make a determination on the request as part of the adjudication of the petition for redetermination. If the hearing officer grants the request to waive or reduce the penalty or interest, or both, the hearing officer may order that the waiver or reduction is contingent upon the requirement that the taxpayer pay the tax or fee for which the penalty or interest was assessed not more than 30 days after the issuance of the decision of the hearing officer.

5. A taxpayer aggrieved by a determination of the Director or a hearing officer regarding a request to waive or reduce the penalty or interest, or both, may appeal that determination to the Commission in the manner provided pursuant to NRS 360.245 to 360.390, inclusive.

Sec. 6. NAC 360.400 and 360.402 are hereby repealed.

TEXT OF REPEALED SECTIONS

360.400 Waiver or reduction of penalty or interest for deficiency; redetermination; appeal.

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 NAC 360.470 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.

360.402 Waiver or reduction of penalty or interest for late payment.

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, 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 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 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 NAC 360.470 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.