

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R019-05

Effective October 31, 2005

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

AUTHORITY: §§1-3, NRS 360.090 and section 1 of Senate Bill No. 15 of the 73rd Session of the Nevada Legislature, chapter 166, Statutes of Nevada 2005, at page 546.

A REGULATION relating to taxation; establishing provisions relating to the compromise of the liability of a person to pay a tax; 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 and 3 of this regulation.

Sec. 2. *As used in section 1 of Senate Bill No. 15 of the 73rd Session of the Nevada Legislature, chapter 166, Statutes of Nevada 2005, at page 546, the Commission will interpret:*

1. The phrase “It is unlikely that the Department will be able to collect the entire amount of the liability of the taxpayer” to include any case in which:

(a) The assets and income of the taxpayer are less than the full amount of the liability of the taxpayer either paid in a single installment or pursuant to a reasonable installment payment plan; and

(b) The taxpayer will not have, in the foreseeable future, the money, assets or means to pay the liability of the taxpayer, either paid in a single installment or pursuant to a reasonable installment payment plan, after the taxpayer has paid for the basic living expenses of the taxpayer based on an evaluation of the circumstances and facts relevant to the taxpayer and

considering the guidelines adopted by the Internal Revenue Service relating to national and local standards for living expenses.

2. The phrase “The amount of the liability of the taxpayer is unclear” to include any case in which:

(a) The amount or existence of the liability of the taxpayer is dependent upon the outcome of a good faith dispute over the relevant facts or applicable law; and

(b) The amount of the liability of the taxpayer:

(1) Has become due to the State, as determined by the date upon which the taxpayer is required to pay a tax, contribution, premium, fee, interest or penalty to the State pursuant to any provision of NRS; and

(2) Has not been reviewed by the Commission, if applicable.

3. The phrase “Such a compromise is appropriate based upon considerations of equity and fairness” to include, without limitation, any case in which:

(a) The medical condition of the taxpayer or the medical condition of the spouse, parent, sibling or child of the taxpayer to whom the taxpayer provides full-time medical care or living assistance was such that the taxpayer was unable to manage the financial affairs of the taxpayer during the period in which the liability of the taxpayer was incurred;

(b) The taxpayer incurred the liability, in whole or in part, as a result of the misconduct of an employee of the taxpayer of which the taxpayer was unaware;

(c) Notwithstanding the conduct which gives rise to the liability of the taxpayer for which a compromise is sought, the taxpayer and any business entities managed, operated or controlled by the taxpayer have a history of compliance with all applicable filing and payment requirements; or

(d) The taxpayer was the victim of a crime, natural disaster or other unforeseeable occurrence that significantly impacted the ability of the taxpayer to:

(1) Pay the financial obligations of the taxpayer as such obligations came due in the ordinary course of business; or

(2) Challenge or petition for review in a timely manner the determination of the liability of the taxpayer when the liability was initially assessed by the Department.

Sec. 3. 1. *A person may request that the Commission compromise the liability of the person for a tax, contribution, premium, fee, interest or penalty assessed pursuant to the provisions of chapter 360, 360B, 362, 363A, 363B, 364A, 368A, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313 or chapter 585 or 680B of NRS as administered or audited by the Department by submitting to the Department, on a form prescribed by the Department, an offer to compromise the liability of the person.*

2. An offer to compromise the liability of a person submitted pursuant to subsection 1 must include:

(a) A statement of the grounds upon which the compromise is sought and any other information to support the offer;

(b) Copies of such financial information and documentation as may be required by the Department, including, without limitation, financial statements, bank records, accounting ledgers and a statement or explanation of any assets that may be acquired by the person pursuant to the resolution of a pending claim, cause of action, settlement or insurance disbursement, inheritance or an unsatisfied judgment or court order;

(c) An affirmation, signed under penalty of perjury, attesting to the truthfulness and accuracy of all information and documentation submitted with the offer to compromise; and

(d) A written statement signed by the person consenting to suspend any and all statutory periods of limitation relevant to the collection of the liability of the taxpayer or the seizure, attachment, garnishment or execution upon property or assets of the taxpayer to satisfy the liability of the taxpayer during the period in which the Commission considers whether to accept or reject the offer of compromise.

3. The Department shall review, analyze and verify an offer of compromise and any accompanying information and documentation submitted pursuant to subsection 1.

4. If, after reviewing, analyzing and verifying the offer pursuant to subsection 3, the Department determines that:

(a) The offer does not comply with subsection 1 or does not include adequate supporting information and documentation, the Department shall return the offer to the person who submitted the offer with a written explanation of the deficiencies.

(b) Except as otherwise provided in paragraph (c), the offer complies with subsection 1, the Department shall forward to the Commission the offer and the recommendation of the Department as to whether the Commission should accept or reject the offer.

(c) The offer complies with subsection 1 and the Department will recommend that the Commission reject the offer, the Department shall advise the person submitting the offer in writing that the Department will recommend that the Commission reject the offer before forwarding the offer and the recommendation of the Department to the Commission pursuant to paragraph (b). A person so advised may withdraw the offer.

5. Except as otherwise provided in this subsection, if a person submits an offer pursuant to subsection 1, the Department shall cease, and shall not commence, any action related to the collection of the liability of the taxpayer or the seizure, attachment, garnishment or execution

upon property or assets in satisfaction of the liability until the Commission accepts or rejects the offer. If the Department determines that the offer submitted pursuant to subsection 1 was offered for the purpose of delaying or avoiding the collection of the liability of the person, the Department may continue or commence any action related to the collection of the liability of the taxpayer or the seizure, attachment, garnishment or execution upon property or assets in satisfaction of the liability.

6. The Commission will review an offer received from the Department pursuant to subsection 4 and issue a written decision as to whether the Commission accepts or rejects the offer of compromise.

7. If the written decision of the Commission issued pursuant to subsection 6 is the acceptance of the offer of compromise, the Commission may:

(a) Make the acceptance of the offer contingent upon the satisfaction of conditions as the Commission deems appropriate, including, without limitation, that all or part of the amount of the compromise be paid within a specific time frame.

(b) Allow the person submitting the offer to pay the amount of the compromise in reasonable installments. If the Commission allows the person submitting the offer to pay the amount of the compromise in reasonable installments, the Commission may make the acceptance of the offer contingent upon the person complying with the schedule of installment payments.

8. If the Commission makes the acceptance of an offer of compromise contingent upon the satisfaction of a condition pursuant to subsection 7, the Commission will hold a hearing before finally accepting or rejecting the offer to determine whether the conditions upon the acceptance of the offer were satisfied. If the Commission determines that the conditions upon

the acceptance of the offer were satisfied, the Commission will issue a written decision to accept the offer of compromise. If the Commission determines that the conditions upon the acceptance of the offer were not satisfied, the Commission will issue a written decision specifying the manner in which such conditions failed to be satisfied.

9. Except as otherwise provided in subsection 10, after the Commission has accepted an offer of compromise and the person has tendered the full amount of money offered in the compromise, the compromise will be deemed to be an accord and satisfaction of the liability of the person for that liability which is the subject of the compromise.

10. If, after a hearing, the Commission determines that the acceptance by the Commission of an offer of compromise was procured through fraud, misrepresentation or concealment or resulted from a mutual mistake of fact, the Commission may issue a written decision to reinstate the liability of the taxpayer in the amount originally assessed by the Department. The written decision of the Commission is a final decision for the purposes of judicial review.

11. The acceptance of an offer of compromise by the Commission pursuant to this section shall not be deemed to be a limitation on the rights and remedies of the Department with respect to any person not named or identified in the offer of compromise.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R019-05

The Nevada Tax Commission adopted regulations assigned LCB File No. R019-05 which pertain to chapter 360 of the Nevada Administrative Code on September 19, 2005.

Notice date: 8/16/2005
Hearing date: 9/19/2005

Date of adoption by agency: 9/19/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 360.

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; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, 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, 2550 Paseo Verde Parkway, Suite 180, Henderson, 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 September 19, 2005 video conferenced between the Nevada Legislative Building, 401 S. Carson Street, Room 3138, Carson City, Nevada and the Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4401, 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) 684-2096 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 August 1, 2005. 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: 39

(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.

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.

Sections 2 and 3 of the proposed regulation were modified prior to adoption, due to issues raised by the Department of Taxation and by affected or interested businesses and persons. 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 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 may be some beneficial economic effects to certain taxpayers concerning a request for an offer in compromise. 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 known federal IRS regulations pertaining to offers in compromise procedures, which are the subject of the proposed regulation. However, those federal regulations relate to income tax filings and not to fees and/or taxes found in Title 32 of Nevada Revised Statutes.

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.