

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R019-05

August 1, 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;

(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; and

(c) At least 5 years have passed since the liability of the taxpayer became final.

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 liability of the taxpayer has not become final pursuant to the order or judgment of a court of competent jurisdiction or pursuant to the final decision of the Commission which is not the subject of a petition for judicial review.

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, 369, 370, 374, 372A, 372, 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 after reviewing the offer pursuant to subsection 3, 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.