

**LCB File No. R101-05**

**PROPOSED REGULATION OF THE DEPARTMENT  
OF MOTOR VEHICLES**

(This proposed regulation was previously adopted as T026-04)

(This draft replaces the version posted 8/1/05)

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Authority: NRS 360A.020

**Section 1.** *Chapter 360A of NAC is hereby established by adding thereto the provisions set forth as sections 2 to 12, 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;*

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

*(e) A special fuel user as defined in NRS 366.080.*

**Sec. 3. 1.** *An application for a waiver or reduction of penalty and/or interest pursuant to NRS360A.070 for a delinquent payment of 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 and/or interest for good cause.

3. If the Department finds that the delinquent payment of 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 of 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; and*
- (b) Payment of the non-contested amount.*

*4. The taxpayer may include a request for an oral hearing.*

*5. 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.*

*6. 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.*

*7. 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:*

*1. Continues to engage in business without having the appropriate license required by NRS 365 or 366;*

*2. Knowingly sells at retail any fuel that is subject to taxation pursuant to chapter 365 or 366 of NRS for which the tax imposed by chapter 365 or 366 of NRS is not remitted; or*

*3. Sells or otherwise distributes dyed special fuel without controlling the access to the dyed special fuel 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.** *The Taxpayer's Bill of Rights on Taxes for Fuels specifies the rights of the taxpayers of Nevada. These rights, summarized in pamphlet form, will be furnished to all taxpayers and any other person upon request and will be updated as needed.*

**Sec. 13.** NAC 366.104 is hereby repealed.

**Sec. 14.** NAC 366.0065 is hereby amended to read as follows:

1. As used in NRS 366.085, the Department will interpret the term "incidentally operated or moved upon a highway" to include any travel by special mobile equipment on a public highway, other than a controlled-access highway as defined in NRS 484.041, if:

(a) *The special mobile equipment meets the definition for "farm equipment" as defined pursuant to NRS 366.203(4)(a);*

~~(a)~~ (b) The transportation of persons or property is not the primary purpose of the travel; and

~~(b)~~ (c) The travel:

(1) Is required to complete a task for which the special mobile equipment is assigned;

(2) Is limited to a specific project; ~~and~~

(3) Except as otherwise provided in subsection 2, does not exceed 10 miles from the point at which the special mobile equipment first entered the public highway; *and*

*(4) The operator of the equipment is able to provide proof to the satisfaction of the Department that the travel on the highway is relative to a specific job site or project and within the 10-mile restriction in subparagraph 3 of paragraph c of subsection 1.*

*2. Dyed fuel may only be used in special mobile equipment that meets the incidentally operated criteria identified in subsection 1 and must not be used by those vehicles identified in subsection 3 or special mobile equipment not defined as farm equipment.*

~~2~~ **3.** The provisions of subparagraph (3) of paragraph ~~(b)~~ (c) of subsection 1 do not apply to any special mobile equipment that is used:

(a) To maintain or clean a public highway;

(b) To remove snow or debris from a public highway; or

(c) To facilitate the movement of traffic on a public highway.

**Sec. 15.** *NAC 366.203 is hereby established to read as follows:*

*1. As used in NRS 366.203, the Department will interpret 'to the extent permitted by federal law' to include Treas. Reg. § 48.4041-8(b)(2)(i), Treas. Reg. § 48.4041-8(b)(2)(ii), and 26 U.S.C §4041(a)(1).*

**Sec. ~~15~~ 16.** NAC 366.210 is hereby amended to read as follows:

1. A special fuel user who consumes special fuel in the propulsion of a motor vehicle off the public highways of this State may obtain a refund of the tax paid pursuant to NRS 366.190 for that portion of the special fuel purchased which is consumed off the public highways of this State.

2. A special fuel user who requests a refund pursuant to subsection 1 shall:

*(a) If the motor vehicle is equipped with a computer or other device capable of computing the number of gallons of special fuel consumed off the public highways of this State, submit to the Department the information provided by the computer or other device as evidence of the amount of special fuel consumed off the public highways of this State; or*

(b) If the motor vehicle is not equipped with a computer or other device capable of computing the number of gallons of special fuel consumed off the public highways of this State:

(1) Compute the amount of special fuel consumed off the public highways of this State by dividing the number of miles the vehicle was operated off the public highways of this State by the average number of miles traveled per gallon of special fuel consumed by the vehicle; and

(2) Submit to the Department the information necessary to establish to the satisfaction of the Department that the information used to make the computation required by subparagraph (1) is accurate.

*3. A special fuel user who requests a refund pursuant to subsection 1 must request the refund within 12 months of the date of payment of the tax.*

**Sec. ~~[16.]~~ 17.** NAC 366.220 is hereby amended to read as follows:

~~[1. Except as otherwise provided in this section, if a motor vehicle with auxiliary equipment consumes special fuel and there is no auxiliary motor or separate fuel tank for the auxiliary motor, the operator of the vehicle must, to obtain a refund pursuant to subsection 5 of NRS 366.207, provide to the Department documentation adequate to establish to the satisfaction of the Department the amount of special fuel which was used to operate the auxiliary equipment.~~

~~2. A special fuel user may obtain a refund pursuant to subsection 5 of NRS 366.207 without providing the documentation required by subsection 1 if the motor vehicle with auxiliary equipment has a common fuel reservoir that is used to propel the motor vehicle on the highway or to operate the auxiliary equipment. If a special fuel user operates such a motor vehicle and the motor vehicle is not specified in subsection 3, or if the special fuel user operates a vehicle specified in that subsection and claims a refund in a percentage that is greater than the percentage set forth in that subsection for the motor vehicle, the special fuel user must establish to the satisfaction of the Department that he is entitled to the refund in accordance with subsection 1.]~~

~~[3.]~~ **1.** The operator of a motor vehicle with auxiliary equipment set forth in this subsection may obtain a refund of the tax paid on the refundable fuel that is used by the motor vehicle on the public highways of this State in the following amounts:

- (a) Boom truck with a block boom..... 10 percent
- (b) Car carrier with a hydraulic winch..... 10 percent
- (c) Dump truck..... 23 percent
- (d) Garbage truck with a compactor..... 20 percent
- (e) Line truck with a digger or derrick..... 20 percent
- (f) Mobile crane..... 42 percent
- (g) Refrigeration truck..... 15 percent
- (h) Sanitation truck..... 15 percent
- (i) Semi-wrecker truck..... 35 percent
- (j) Service truck with a jackhammer or pneumatic drill..... 15 percent
- (k) Snow plow..... 10 percent
- (l) Sweeper truck..... 20 percent
- (m) Tank truck other than a truck with a milk or pneumatic tank..... 24 percent
- (n) Truck for distributing hot asphalt..... 10 percent
- (o) Truck with a cement mixer..... 30 percent
- (p) Truck with a dump trailer..... 15 percent
- (q) Truck with a milk tank..... 30 percent
- (r) Truck with a pneumatic tank..... 15 percent
- (s) Truck with a pump for cleaning a sewer or cesspool..... 90 percent
- (t) Truck with an aerial lift..... 20 percent
- (u) Truck with equipment to move a dumpster or cargo container..... 23 percent

~~[4.]~~ **2.** To obtain a refund pursuant to subsection 3, the operator of the motor vehicle must establish to the satisfaction of the Department that:

(a) The tax has been paid on the special fuel for which the operator wishes to obtain a refund; and

(b) The special fuel was used in this State to operate auxiliary equipment that is mounted on the motor vehicle.

~~[5.]~~ 3. Except as otherwise provided in NAC 366.230, a vehicle with an air-conditioning unit is not entitled to a refund pursuant to this section.

~~[6.]~~ 4. Notwithstanding any provision of this section to the contrary, the amount of a refund allowed for a special fuel user or an operator pursuant to this section may not exceed the total amount of taxes paid by the special fuel user or operator for special fuel.

~~[7.]~~ 5. As used in this section, “refundable fuel”:

(a) Means the total amount of special fuel purchased by a person during the period specified in subsection 5 of NRS 366.207 for which taxes have been paid pursuant to chapter 366 of NRS, less any amount of that special fuel:

(1) That is claimed by the person for another exempt use;

(2) For which any taxes are remitted to another jurisdiction on behalf of the person; and

(3) That is used during that period for any other taxable use.

(b) Does not include special fuel for which a special fuel user or an operator has previously received a refund for credit.

*6. A special fuel user who requests a refund pursuant to this section must request the refund within 12 months of the date of payment of the tax.*