

LCB File No. R161-05

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

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

AUTHORITY: NRS 360.090

GENERAL PROVISIONS

Section 1. Chapter 362 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec 2. *Definitions. (NRS 360.090) As used in this regulation, unless the context otherwise requires:*

1. *“Closure” means the point in time when re-vegetation has been completed, excess solutions have been eliminated to the extent practical, the maximum degree of passive management has been implemented, and a post-closure monitoring program has been initiated.*

2. *“Commission” means the Nevada Tax Commission.*

3. *“Department” means the Department of Taxation.*

4. *“Reclamation” means actions performed during or after developmental work or mining operation identified in a Reclamation Plan to shape, stabilize, re-vegetate or otherwise treat the land in order to return it to a safe, stable condition consistent with the establishment of a productive post-mining use of the land and the abandonment of a facility in a manner which ensures the public safety, as well as the encouragement of techniques which minimize the adverse visual effects, consistent with the provisions of the Nevada Revised Statutes and Nevada Administrative Code, Chapter 519A. Reclamation does not include actions performed after the closure of a mine.*

5. *“Reclamation Plan” means a plan for reclamation, including an amendment or modification thereof, if the plan has been:*

a) *Approved pursuant to the provisions of the Code of Federal Regulations, Title 43--Public Lands: Interior, Chapter II,--Bureau Of Land Management, Department of the Interior, Part 3800 -Mining Claims Under The General Mining Laws (43 CFR 3809); or*

b) *Approved pursuant to any other Federal or State law which imposes surface mining reclamation and permit requirements substantially similar to the requirements imposed by 43 CFR 3809 or NRS chapter 519A.*

6. *“Qualified Reclamation Costs” means an amount equal to 90 percent of the Reclamation Costs determined pursuant to subsection 7.*

7. *“Reclamation Costs” means the costs of performing Reclamation as required by a Reclamation Plan, but excluding the following:*

a) *Such costs of administration as may be required by the state or federal agency regulating the reclamation, including costs associated with engineering, design and*

construction plans, contingency allowances, contractor profits, liability insurance, payment and performance bonds, and state or federal agency direct and indirect contract administration;

- b) Such costs as may be required for post-closure
 - (i). site maintenance, monitoring or evaluation,*
 - (ii). long-term monitoring of surface and groundwater quality and impacts on the receiving environment,*
 - (iii). long-term stability and erosion of structures that will remain on the site,*
 - (iv). land use and post-closure aesthetics; and**
- c. Such costs as may be necessary to ameliorate social and economic impacts resulting from a decline in the economic potential of an area and the long-term burden placed on future generations as a result of post-closure maintenance requirements.*

Sec. 3. “Actual cost of extracting the mineral” interpreted. (NRS 360.090, 362. 120).

For the purposes of NRS 362.120(3), the Commission interprets the term “actual cost of extracting the mineral” to include:

- 1. Qualified Reclamation Costs incurred during any period for which a taxpayer reports his deduction for reclamation to the Department according to an accrual method of accounting.*
- 2. Reclamation Costs paid during any period for which a taxpayer reports his deduction for reclamation to the Department according to a cash method of accounting.*

Sec. 4. Deduction for Reclamation (NRS 360.090, 362.120)

1. A taxpayer reporting according to an accrual method of accounting may claim as deductions those Qualified Reclamation Costs incurred during the reporting period. For purposes of this section, the amount of Qualified Reclamation Costs incurred for any given reporting period is an amount equal to the product obtained by multiplying the difference between Qualified Reclamation Costs and Reclamation deductions previously claimed, by a fraction in which the numerator is the number of units of production sold in that reporting period and the denominator is the total number of units of production available to be recovered at the beginning of the reporting period. If Qualified Reclamation Costs have been reduced by Reclamation performed by the taxpayer, then, for purposes of the above calculation, the Reclamation deductions previously claimed must be reduced by the same amount.

2. A taxpayer reporting according to a cash method of accounting may claim as deductions those Reclamation Costs paid during the reporting period.

3. A taxpayer that has reported his deduction for Reclamation according to an accrual method of accounting in a prior reporting period cannot change to a cash method of accounting and a taxpayer that has reported his deductions for reclamation according to a cash method of accounting in a prior reporting period cannot change to an accrual method of accounting unless the Department, upon written application by the taxpayer, approves a change in the method of accounting. The Department shall allow a change in the method of accounting for the reclamation deduction, if the taxpayer demonstrates to the Department's satisfaction that the proposed change will not result in the double counting of deductions.

Sec. 5. Deduction for reclamation following sale of mine.

If a taxpayer sells the assets of a mine prior to closure, the buyer shall thereafter report the deduction for reclamation according to the same method of accounting used by the seller unless the Department, upon written application of the buyer, approves a change in the method of accounting. The Department shall approve such a request if the Department is satisfied that the change in the method of accounting will not result in the deduction of reclamation costs or qualified reclamation costs previously deducted by the seller.

NAC 362.040 is hereby amended to read as follows:

NAC 362.040 Deductions: Depreciation of capitalized costs. (NRS 360.090, 362.120)

1. Except as otherwise provided by NAC 362.100 to 362.160, inclusive, leasehold improvements and buildings must be depreciated over a 20-year period using the straight-line method.

2. Except as otherwise provided by NAC 362.100 to 362.160, inclusive, fixed machinery and equipment must be depreciated over a 20-year period using the straight-line method.

3. Mobile machinery and equipment must be depreciated over a 10-year period using the straight-line method.

4. Automobiles and light service vehicles must be depreciated over a 5-year period using the straight-line method.

5. Except as otherwise provided by NAC 362.100 to 362.160, inclusive, an integrated processing assembly must be depreciated over a 20-year period using the straight-line method. Subsequent additions to the unit must also be reported and be depreciated over a 20-year period using the straight-line method.

~~[6. Depreciation of assets on hand as of January 1, 1980, must be calculated at the rate of 2.1 percent per year for the years ending before January 1, 1975, plus the depreciation allowance granted by the department for the period between January 1, 1975, and January 1, 1980. The total depreciation thus calculated must be deducted from the acquisition cost and is the basis for continuing depreciation according to the classification of the asset.]~~

7. If any property is disposed of before the end of the depreciation period, the remaining amount of allowable depreciation, if the property had remained in use, may be reported in total as an additional expense of depreciation for the reporting period. The amount of depreciation must be reduced by the amount of any consideration received for the property from sale, insurance recovery, trade-in, or any other reimbursement, but not below zero.

8. A mining operator may petition the Nevada tax commission for reconsideration of the allowable depreciation of property. The commission may adjust the allowable depreciation if the petitioner presents satisfactory evidence that the expected life of the property is longer than that which is provided for in this section. If the commission finds that the petitioner has presented satisfactory evidence that the expected life of the property is shorter than that which is provided for in this section, the petitioner must comply with the provisions of NAC 362.100 to 362.160, inclusive, to apply for permission to depreciate the property in the accelerated manner prescribed by NAC 362.140.

NAC 362.050 is hereby amended to read as follows:

NAC 362.050 Deductions: Operating costs. (NRS 360.090, 362.120)

1. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are deductible except as limited by subsection 6 of NRS 362.120:

(a) The cost of renting equipment if the amount paid as rental is commercially reasonable in the circumstances;

(b) The cost of contracting for all or part of the mine's operations, if the contract price is commercially reasonable in the circumstances;

(c) The cost of services which a Nevada mine receives under contract from its corporate office or the office of a related corporation, if:

(1) The cost is commercially reasonable in the circumstances; and

(2) The cost is separately stated in a manner consistent with good accounting practices;

(d) The reasonable cost of management provided to a joint venture by a member, if the fees relate directly to operation of the mine;

(e) The sales and use taxes expended for tangible goods or taxable services to the extent that the cost of such goods or services is an allowable operating cost;

(f) The direct cost of housing for employees that is owned and maintained by the operator of the mine, including, without limitation, any losses to the housing that are incurred by the operator of the mine, but as reduced by any payments received for rental of the property; ~~and~~

(g) The cost of compensation for employees. As used in this paragraph, "compensation" means wages, salaries, paid vacation leave, paid sick leave, performance-related bonuses, contributions to and administrative costs of qualified pension and retirement plans, 401k and similar deferred benefit plans, dental insurance, medical insurance, accidental death and dismemberment insurance, Medicare contributions, social security payments, medical clinic and hospital expenses, state and federal unemployment compensation contributions or payments, workers' compensation insurance, and postemployment training expenses for training conducted in compliance with the Mine Safety and Health Administration and the division of industrial relations of the department of business and industry or their successor organizations *and vehicle allowances to the extent the vehicle is used for business, if the taxpayer has stated a policy prohibiting an employee's personal use of an automobile; and*

(h) The cost of transportation services provided by a third party or the company for employees to and from the points of extraction or reduction.

NAC 362.080 is hereby repealed.

~~[NAC 362.080 Waiver or reduction of penalty or interest of tax on net proceeds of minerals. (NRS 360.090)]~~

~~— 1. The Nevada tax commission may waive or reduce the penalty or interest imposed on a delinquent payment of the tax on the net proceeds of minerals which was imposed pursuant to NRS 362.160 if it finds that the proximate cause of the delinquent payment was:~~

~~— (a) Circumstances completely beyond the control of the taxpayer who was required to make the payment, or the agent of the taxpayer;~~

~~— (b) Justifiable neglect or justifiable inadvertence, and that the taxpayer making the payment has no history of habitually delinquent payments; or~~

~~— (c) Other good cause shown.~~

~~— 2. Any application for the waiver or reduction of the penalty or interest on a delinquent payment of the tax on the net proceeds of minerals must be filed in writing with the commission within 30 days after the tax became due. The application must include a statement of the circumstances which caused the delinquent payment.~~

~~— 3. In determining whether the circumstances which caused the delinquent payment in any particular case were completely beyond the control of the taxpayer required to make the~~

~~payment, the commission will consider only evidence which shows that the delinquent payment was proximately caused by fire, earthquake, flood or other act of God, theft or a similar cause not directly related to the actions of the taxpayer who was required to make the payment, whether intentional or not.~~

~~— 4. If the commission finds that a delinquent payment was caused by circumstances completely beyond the control of the taxpayer required to make the payment, or the agent of the taxpayer, and that the tax was paid as soon as reasonably possible thereafter, the penalty and interest imposed for the delinquent payment will be waived.~~

~~— 5. If the commission finds that the cause of the delinquent payment of taxes was justifiable neglect or justifiable inadvertence, that the taxpayer making the delinquent payment has not made more than one other delinquent payment in the immediately preceding 24 months, and that the payment was made as soon as reasonably possible thereafter:~~

~~— (a) The penalty for the delinquent payment will:~~

~~— (1) Be reduced to 2 percent if the payment is not more than 2 days late;~~

~~— (2) Be reduced to 4 percent if the payment is more than 2 but not more than 5 days late;~~

~~— (3) Be reduced to 6 percent if the payment is more than 5 but not more than 10 days late;~~

~~— (4) Be reduced to 8 percent if the payment is more than 10 but not more than 15 days late;~~

~~or~~

~~— (5) Not be reduced 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 of the penalty applied by the commission pursuant to paragraph (a).~~

~~— (c) The penalty and interest will be waived if the total penalty and interest after reduction pursuant to this subsection is \$5 or less.~~

~~— 6. In determining whether the proximate cause of the delinquent payment was for other good cause shown, the commission will require the taxpayer to submit, without limitation, evidence that:~~

~~— (a) The assessment of penalties and interest constitutes an extreme financial hardship;~~

~~— (b) The assessment of interest and penalties is equal to or greater than two-thirds of the amount of the tax which is due; or~~

~~— (c) The assessment of penalties and interest is extremely unfair or extremely inequitable under the circumstances.~~

~~— 7. The department shall provide the commission with its recommendation concerning the waiver or reduction of penalties and interest after a review of all of the evidence that has been received from the taxpayer.~~

~~— 8. As used in this section, “extreme financial hardship” means that the taxpayer who owes the tax has the present ability to pay the tax but payment of the penalties and interest will render the taxpayer insolvent.]~~

NAC 362.085 is hereby amended to read as follows:

NAC 362.085 *Filing; Failure to File; Burden of Proof; Penalties for failure to file statements.* (NRS 360.090, 362.230) ***Section 1. If the reporting entity fails to submit a report as required by NRS 362.110, [F] the department shall impose a penalty pursuant to NRS 362.230 [in the following amounts:] as follows:***

1. Net proceeds or royalties not exceeding \$5,000, the penalty is ***ten percent of the net proceeds or royalty amount, or \$100, whichever is less.***

2. Net proceeds or royalties *greater than \$5,000 but* not exceeding \$10,000, the penalty is \$500.
3. Net proceeds or royalties *greater than \$10,000 but* not exceeding \$50,000, the penalty is \$1,000.
4. Net proceeds or royalties *greater than \$50,000 but* not exceeding \$100,000, the penalty is \$2,500.
5. Net proceeds or royalties of more than \$100,000, the penalty is \$5,000.

Sec. 2. *Filing.*

1. The annual report required to be filed pursuant to NRS 362.110, subsection 1, which is transmitted through the United States mail shall be deemed to have been received on the date shown by the post office cancellation mark stamped upon the envelope containing it, or on the date it was mailed if proof satisfactory to the Commission establishes that the document or remittance was timely deposited in the United States mail, postage prepaid, and properly addressed to the Commission.

2. A receipt for material sent by certified or registered mail, if different than the post office cancellation mark, will prevail if the date on the receipt is earlier than the cancellation date.

3. A record authenticated by the post office that the cancellation date on certain batches of mail was erroneous is proof satisfactory to the Commission that the mailing was made on a date other than the post office cancellation date.

4. If it is known that the postal service was inoperative at a certain time due to strikes, riots, warfare, acts of God, or other reasons, the Commission will consider the circumstances, and if there is other evidence of timely mailing, will accept the evidence and deem the return or payment timely.

5. Under no circumstances will:

(a) The cancellation date affixed by a postage meter in the possession of the taxpayer or other person; or

*(b) Statements by the taxpayer or his employees,
be considered sufficient to refute the post office cancellation date as the date of mailing.*

Sec. 3. *Failure to File.* *If the annual report required to be filed pursuant to NRS 362.110 does not include all applicable reports and statements, the Department will consider the reporting entity to have failed to file the tax return as required by NRS 362.110.*

Sec. 4. *Burden of proof.* *When the Department does not receive a tax return and alleges the reporting entity has not filed the return, to avoid a late filing penalty, the reporting entity must produce documentation establishing the return was filed.*