

LCB File No. R194-05

PROPOSED REGULATION OF THE NEVADA TAX COMMISSION

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

AUTHORITY: NRS 360.090, NRS 360.093

A REGULATION relating to taxation; revising the provisions relating to the payment and administration of the excise tax on bank branch offices in excess of one in any county in this State; repealing certain provisions relating to the payment and administration of the modified business tax on financial institutions; and providing other matters properly relating thereto.

Section 1. NAC 363A.360 is hereby amended as provided in section 2 of this regulation.

Sec. 2. 1. The entire amount of the excise tax imposed by NRS 363A.120 becomes due for all the branch offices in excess of one operated or otherwise maintained by a bank in *any county in* this State on the first day of a calendar quarter, regardless of whether the bank ceases to operate or otherwise maintain any of those branch offices during that calendar quarter.

2. If the operation or other maintenance of a branch office commences after the first day of a calendar quarter, no excise tax is due pursuant to the provisions of NRS 363A.120 for the branch office for that calendar quarter.

3. For the purposes of this section:

(a) The operation or other maintenance of a branch office shall be deemed to commence on the date the branch office first opens for business to the public.

(b) If the first day of a calendar quarter does not occur on a regular banking day for a bank, the bank shall be deemed to operate or otherwise maintain a branch office on that date if the bank:

(1) Held the branch office open for business to the public at any time during the immediately preceding 5 regular banking days for the bank; and

(2) Holds the branch office open for business to the public at any time during the immediately succeeding 5 regular banking days for the bank.

4. As used in this section, the words and terms defined in NRS 363A.120 have the meanings ascribed to them in that section.

Sec. 3. NAC 363A.080, 363A.120, 363A.130, 363A.150, 363A.160, 363A.170, 363A.180, 363A.190, 363A.200, 363A.210, 363A.220, 363A.230, 363A.240, 363A.250, 363A.260, 363A.270, 363A.280, 363A.290, 363A.300, 363A.310, 363A.320, 363A.370 and 363A.410 are hereby repealed.

TEXT OF REPEALED SECTIONS

363A.080 “NAICS” defined. “NAICS” means the *North American Industry Classification System*, as adopted by reference in NAC 363A.150.

363A.120 “SIC” defined. “SIC” means the *Standard Industrial Classification Manual*, as adopted by reference in NAC 363A.150.

363A.130 “Financial institution” interpreted.

1. For the purposes of NRS 363A.050:

(a) The Commission interprets the term “financial institution” to exclude a federal land credit association, farm credit bank, agricultural credit association or similar institution organized under the provisions of the Farm Credit Act.

(b) A seller of goods or a provider of services who provides or extends credit, or retains a security interest in the goods he sells, only in connection with the financing of the goods he sells

or the services he provides shall not be deemed to be a business entity engaged in the business of lending money, providing credit or securitizing receivables.

2. As used in this section, “security interest” has the meaning ascribed to it in NRS 104.1201.

363A.150 Adoption by reference of *Standard Industrial Classification Manual* and *North American Industry Classification System*.

1. The *Standard Industrial Classification Manual*, 1987 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$40.

2. The *North American Industry Classification System*, 2002 edition, published by the United States Office of Management and Budget, is hereby adopted by reference. A copy of the manual may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the price of \$33.

363A.160 Use of four-digit industry codes in SIC or corresponding provisions of NAICS.

In determining whether a person who is doing business in this State qualifies as a financial institution pursuant to paragraph (b) of subsection 1 of NRS 363A.050, the Department shall use the four-digit industry codes set forth in the SIC, or the corresponding provisions of the NAICS, as described in NAC 363A.180 to 363A.320, inclusive.

363A.170 Classification of business by Division: Effect; dispute.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, if the Division has appropriately classified a person who is doing business in this State under one or more of the provisions of the SIC or NAICS described in NAC 363A.180 to 363A.320, inclusive, that person shall be deemed to be a financial institution pursuant to paragraph (b) of subsection 1 of NRS

363A.050. A person may dispute such a classification by the Division, solely for the purpose of determining whether the person qualifies as a financial institution pursuant to that paragraph, by filing a petition with the Department setting forth the reasons why the person believes that he has been misclassified by the Division. The petition must include:

(a) A description of the business of the person;

(b) A statement of each ground upon which the person disputes the classification by the Division; and

(c) Any financial records, documents and other evidence necessary to substantiate the person's claim that he has been misclassified by the Division, including, without limitation, any:

(1) Pertinent filings with the Securities and Exchange Commission;

(2) Pertinent filings with the Office of the Secretary of State;

(3) Pertinent evidence of his classification for the purpose of a local business license; and

(4) Other pertinent filings with federal, state or local agencies that classify or characterize the person.

2. Within 6 months after it receives a petition filed pursuant to this section, the Department shall issue a written decision granting or denying the petition. The decision must be served and may be appealed as provided in NRS 360.245.

363A.180 Security brokers, dealers and flotation companies.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (1) or (2) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6211 (Security Brokers, Dealers, and Flotation Companies), or the corresponding provisions of NAICS Code 52311, 52312, 52391 or 523999.

2. SIC Code 6211:

(a) Refers to establishments primarily engaged in the purchase, sale and brokerage of securities, and those, generally known as investment bankers, primarily engaged in originating, underwriting and distributing issues of securities. Establishments primarily engaged in issuing shares of mutual and money market funds, unit investment trusts and face amount certificates are classified in SIC Industry Group 672 (Investment Offices). Establishments primarily engaged in providing investment advice on a contract or fee basis to establishments which deal in financial contracts are classified in SIC Code 6282 (Investment Advice).

(b) Includes, without limitation:

- (1) Agents for mutual funds.
- (2) Bond dealers and brokers.
- (3) Distributors, security.
- (4) Floor traders, security.
- (5) Investment bankers.
- (6) Investment certificates, sale of.
- (7) Investment firm-general brokerage.
- (8) Mineral leases, dealers in.
- (9) Mineral royalties, dealers in.
- (10) Mortgages, buying and selling (rediscounting).
- (11) Mutual fund agents.
- (12) Mutual funds, selling by independent salesperson.
- (13) Note brokers.
- (14) Oil and gas lease brokers.

- (15) Oil royalties, dealers in.
- (16) Option dealers, stock.
- (17) Sale of partnership shares in real estate syndicates.
- (18) Security brokers.
- (19) Security dealers.
- (20) Security flotation companies.
- (21) Security traders.
- (22) Security underwriters.
- (23) Stock brokers and dealers.
- (24) Tax certificate dealers.

363A.190 Commodity contracts brokers and dealers.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (3) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6221 (Commodity Contracts Brokers and Dealers), or the corresponding provisions of NAICS Code 52313 or 52314.

2. SIC Code 6221:

(a) Refers to establishments primarily engaged in buying and selling commodity contracts on either a spot or future basis for their own account or for the account of others. These establishments are members, or are associated with members, of recognized commodity exchanges. Establishments primarily engaged in buying and selling commodities are classified in SIC Code 50 or 51 (Wholesale Trade).

(b) Includes, without limitation:

- (1) Commodity brokers (contracts).
- (2) Commodity dealers (contracts).
- (3) Futures brokers, commodity.
- (4) Futures dealers, commodity.
- (5) Traders, commodity contract.

363A.200 Security and commodity exchanges. 1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (4) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6231 (Security and Commodity Exchanges), or the corresponding provisions of NAICS Code 52321.

2. SIC Code 6231:

(a) Refers to establishments primarily engaged in furnishing space and other facilities to members for the purpose of buying, selling or otherwise trading in stocks, stock options, bonds or commodity contracts.

(b) Includes, without limitation:

- (1) Commodity contract exchanges.
- (2) Futures exchanges, contract.
- (3) Option exchanges, stock.
- (4) Security exchanges.
- (5) Stock exchanges.

363A.210 Investment advice.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (5) of paragraph

(b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6282 (Investment Advice), or the corresponding provisions of NAICS Code 52392 or 52393.

2. SIC Code 6282:

(a) Refers to establishments primarily engaged in furnishing investment information and advice to companies and individuals concerning securities and commodities on a contract or fee basis. Establishments that provide advice and also act as brokers or dealers are classified in SIC Code 6211 (Security Brokers, Dealers, and Flotation Companies).

(b) Includes, without limitation:

- (1) Futures advisory service.
- (2) Investment advisory service.
- (3) Investment counselors.
- (4) Investment research.
- (5) Manager of mutual funds, contract or fee basis.

363A.220 Services allied with exchange of securities or commodities which are not elsewhere classified.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (6) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6289 (Services Allied With the Exchange of Securities or Commodities, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 523991.

2. SIC Code 6289:

(a) Refers to establishments primarily engaged in furnishing services to security or commodity holders, brokers or dealers, not elsewhere classified.

(b) Includes, without limitation:

- (1) Bondholders protective committees.
- (2) Custodians of securities.
- (3) Exchange clearinghouses, commodity.
- (4) Exchange clearinghouses, security.
- (5) Financial reporting.
- (6) Quotation service, stock.
- (7) Royalty owners protective associations.
- (8) Security custodians.
- (9) Security holders protective committees.
- (10) Stock transfer agents.
- (11) Transfer agents, securities.

363A.230 Offices of bank holding companies.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (7) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6712 (Offices of Bank Holding Companies), or the corresponding provisions of NAICS Code 551111.

2. SIC Code 6712:

(a) Refers to establishments primarily engaged in holding or owning the securities of banks for the sole purpose of exercising some degree of control over the activities of bank companies whose securities they hold. Companies holding securities of banks, but which are predominantly operating the banks, are classified according to the kind of bank operated.

(b) Includes, without limitation, bank holding companies.

363A.240 Offices of holding companies which are not elsewhere classified.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (8) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6719 (Offices of Holding Companies, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 551112.

2. SIC Code 6719:

(a) Refers to establishments primarily engaged in holding or owning securities of companies other than banks, for the sole purpose of exercising some degree of control over the activities of the companies whose securities they hold. Companies holding securities, but which are predominantly operating companies, are classified according to the kind of business operated.

(b) Includes, without limitation:

- (1) Holding companies, except bank.
- (2) Investment holding companies, except bank.
- (3) Personal holding companies, except bank.
- (4) Public utility holding companies.

363A.250 Open-end management investment offices.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (9) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6722

(Management Investment Offices, Open-End), or the corresponding provisions of NAICS Code 52591.

2. SIC Code 6722:

(a) Refers to establishments primarily engaged in issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain a provision requiring redemption by the company upon request of the security holder.

(b) Includes, without limitation:

(1) Management investment funds, open-end.

(2) Money market mutual funds.

(3) Mutual fund sales on own account.

363A.260 Unit investment trusts, face-amount certificate offices and closed-end management investment offices.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (10) or (11) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6726 (Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices), or the corresponding provisions of NAICS Code 52599.

2. SIC Code 6726:

(a) Refers to establishments primarily engaged in issuing unit investment trusts or face-amount certificates, and establishments primarily engaged in issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain no provision requiring redemption by the company upon request of the security holder. Unit investment trust companies are organized under a trust indenture, contract of custodianship or agency, or similar

instrument, do not have a board of directors, and issue only securities redeemable at the request of the security holder, each of which represents an undivided interest in a unit of specified securities, but does not include voting trusts. Face-amount certificates, sometimes referred to as guaranteed face-amount certificates, are essentially obligations of the issuing company to pay a fixed sum at a specified maturity date and usually require periodic payments by the purchaser.

(b) Includes, without limitation:

- (1) Face-amount certificate issuing.
- (2) Government National Mortgage Association (GNMA) pools.
- (3) Investment funds, closed-end: management of.
- (4) Investors' syndicates.
- (5) Issuing of face-amount installment certificates.
- (6) Management investment funds, closed-end.
- (7) Unit investment trusts.

363A.270 Educational, religious and charitable trusts.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (12) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6732 (Educational, Religious, and Charitable Trusts), or the corresponding provisions of NAICS Code 813211.

2. SIC Code 6732:

(a) Refers to establishments primarily engaged in the management of the funds of trusts and foundations organized for religious, educational, charitable or nonprofit research purposes.

(b) Includes, without limitation:

- (1) Charitable trusts, management of.
- (2) Educational trusts, management of.
- (3) Religious trusts, management of.

363A.280 Trusts other than educational, religious and charitable trusts.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (13) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6733 (Trusts, Except Educational, Religious, and Charitable), or the corresponding provisions of NAICS Code 52392, 523991 or 525.

2. SIC Code 6733:

(a) Refers to establishments primarily engaged in the management of the funds of trusts and foundations organized for purposes other than religious, educational, charitable or nonprofit research.

(b) Includes, without limitation:

- (1) Administrators of private estates (nonoperating).
- (2) Personal investment trusts, management of.
- (3) Trustees: except for educational, religious, or charitable trusts.
- (4) Trusts except educational, religious, and charitable: management of.
- (5) Vacation funds for employees.

363A.290 Oil royalty traders.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (14) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC

Code 6792 (Oil Royalty Traders), or the corresponding provisions of NAICS Code 52391 or 53311.

2. SIC Code 6792:

(a) Refers to establishments primarily engaged in investing in oil and gas royalties or leases, or fractional interests therein.

(b) Includes, without limitation:

(1) Oil leases, buying and selling on own account.

(2) Oil royalty companies.

363A.300 Patent owners and lessors.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (15) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6794 (Patent Owners and Lessors), or the corresponding provisions of NAICS Code 53311.

2. SIC Code 6794:

(a) Refers to establishments primarily engaged in owning or leasing franchises, patents and copyrights which they in turn license others to use.

(b) Includes, without limitation:

(1) Copyright buying and licensing.

(2) Franchises, selling or licensing.

(3) Music licensing to radio stations.

(4) Music royalties, sheet and record.

(5) Patent buying and licensing.

(6) Patent leasing.

(7) Performance rights, publishing and licensing of.

363A.310 Real estate investment trusts.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (16) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6798 (Real Estate Investment Trusts), or the corresponding provisions of NAICS Code 52593.

2. SIC Code 6798:

(a) Refers to establishments primarily engaged in closed-end investments in real estate or related mortgage assets operating so that they could meet the requirements of the Real Estate Investment Trust Act of 1960, as amended. The Real Estate Investment Trust Act of 1960 exempts trusts from corporate income and capital gains taxation, provided they invest primarily in specified assets, pay out most of their income to shareholders, and meet certain requirements regarding the dispersion of trust ownership.

(b) Includes, without limitation:

(1) Mortgage investment trusts.

(2) Mortgage trusts.

(3) Real estate investment trusts (REITs).

(4) Realty investment trusts.

(5) Realty trusts.

363A.320 Investors which are not elsewhere classified.

1. Except as otherwise provided in subsection 2 of NRS 363A.050, a person who is doing business in this State qualifies as a financial institution pursuant to subparagraph (17) of paragraph (b) of subsection 1 of that section if the person is appropriately classified under SIC Code 6799 (Investors, Not Elsewhere Classified), or the corresponding provisions of NAICS Code 52391, 52392 or 52313.

2. SIC Code 6799:

(a) Refers to establishments primarily engaged in investing, not elsewhere classified.

(b) Includes, without limitation:

(1) Commodity contract pool operators.

(2) Commodity contract trading companies.

(3) Investment clubs.

(4) Security speculators for own account.

(5) Tax liens: holding, buying, and selling.

(6) Venture capital companies.

363A.370 Interpretation of certain statutory terms.

For the purposes of NRS 363A.130, the Commission interprets the term:

1. "Claims" to mean claims for those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

2. "Direct administrative services costs" to mean, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:

(a) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;

(b) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;

(c) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;

(d) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;

(e) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or directly to administer claims; and

(f) The depreciation of property other than medical or office supplies, as computed pursuant to NAC 363A.420, used for the provision of medical care or the direct administration of claims.

3. “Employees” to mean employees whose wages are included within the measure of the excise tax imposed upon an employer by NRS 363A.130 and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.

4. “Health benefit plan” to mean a health benefit plan that covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

5. “Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan” to mean any amounts which are:

(a) Paid by an employer to a Taft-Hartley trust which:

(1) Is formed pursuant to 29 U.S.C. § 186(c)(5); and

(2) Qualifies as an employee welfare benefit plan, as that term is defined in 29 U.S.C. § 1002; and

(b) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code.

363A.410 Health care deduction: Limitations. The health care deduction does not:

1. Except as otherwise provided in subsection 6 of NRS 363A.130, allow an employer to deduct any sum for any calendar quarter other than the calendar quarter in which the employer paid that sum.

2. Allow an employer to deduct any sum paid by the employer before October 1, 2003.