

**ADOPTED REGULATION OF
THE NEVADA TAX COMMISSION**

LCB File No. R084-07

Effective December 5, 2007

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

AUTHORITY: §1, NRS 360.090 and 360.200 and §§15 and 15.5 of chapter 539, Statutes of Nevada 2007, at pages 3386-87).

A REGULATION relating to taxation; providing for the interpretation of certain tax exemptions and abatements based upon the use of energy; and providing other matters properly relating thereto.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto a new section to read as follows:

For the purposes of:

1. Subsection 5 of section 15 of chapter 539, Statutes of Nevada 2007, the Department shall interpret the term:

(a) “Building” to mean a building or other structure that:

(1) Meets the requirements of paragraphs (a), (b) and (c) of that subsection; and

(2) Is described in the application for registration of the construction project with the Office of Energy for the purpose of obtaining the tax exemption provided pursuant to paragraph (d) of subsection 1 of NRS 374.307, as amended by chapter 2, Statutes of Nevada 2005, 22nd Special Session, at page 71,

↳ other than any building or other structure for which the principal use is as a residential dwelling for not more than four families.

(b) “Construction contract” to mean a contract between an owner of real property or an affiliate or subsidiary of the owner, and a contractor or construction manager which:

(1) Defines their respective roles and responsibilities for the construction of a project on the property;

(2) Establishes the scope of work, the amount of money to be paid to the contractor or construction manager and the allowable time for the duration of the contract; and

(3) Describes the terms and conditions of a construction project.

(c) “Preconstruction contract” to mean a written and executed agreement that:

(1) Precedes the construction of or the execution of a construction contract for a project for which a partial tax abatement is sought;

(2) Clearly indicates a commitment to construct the project; and

(3) Is entered into to provide at least one of the following services relating to the construction project:

(I) Project financing;

(II) Engineering;

(III) Design;

(IV) Architecture;

(V) Labor; or

(VI) Subcontracting.

(d) “Used in the construction of a building” to mean attached to or incorporated into a building by a contractor in the performance of a construction contract in such a manner as to:

(1) Become an integral or inseparable part of the building; or

(2) Become a fixture to the building.

2. Section 15.5 of chapter 539, Statutes of Nevada 2007, the Department shall interpret the term “building or other structure” to mean a building or other structure that:

*(a) Meets the requirements of paragraphs (a), (b) and (c) of subsection 1 of that section;
and*

(b) Is described in the application for registration of the construction project with the Office of Energy for the purpose of obtaining the partial abatement of taxes provided pursuant to the former provisions of NRS 361.0775,

↳ other than any building or other structure for which the principal use is as a residential dwelling for not more than four families.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R084-07**

The Nevada Tax Commission adopted regulations assigned LCB File No. R084-07 which pertain to chapter 360 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulations, notice(s) of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of late-filed appeals to the Tax Commission as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada Department of Taxation (“Department”), <http://tax.state.nv.us/>, and mailed to all county libraries in Nevada and posted at the following locations:

Department of Taxation
1550 College Parkway, Suite 115
Carson City, Nevada 89706

Department of Taxation
4600 Kietzke Lane, Suite 235
Reno, Nevada 89502

Department of Taxation
555 E. Washington Avenue, Suite 1300
Las Vegas, Nevada 89101

Department of Taxation
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074

Department of Taxation
1010 Ruby Vista Drive, Suite 102
Elko, Nevada 89801

Legislative Building
401 S. Carson Street
Carson City, Nevada 89701

Nevada State Library
100 Stewart Street
Carson City, Nevada 89701

The Department of Taxation, as staff to the Nevada Tax Commission (“Commission”), solicited comment from the public by posting several notices of a workshop, dated July 2, 2007, September 10, 2007, and November 6, 2007, to the locations listed above. Workshops were held on July 17, 2007, July 24, 2007, September 26, 2007, and November 21, 2007. The minutes of those meetings may be obtained by writing to the Department of Taxation at 1550 College Parkway, Suite 115, Carson City, Nevada 89706. Thereafter, on or about October 30, 2007, and November 19, 2007 (amended – location change), the Executive Director of the Department of Taxation (“Executive Director”) issued a Notice of Intent to Act Upon a Regulation which incorporated in the

proposed amendments the suggestions of the parties who attended the workshops. The Commission, on December 3, 2007, adopted said regulation.

A copy of the summary of the public response, if any, to the proposed regulation may be obtained from the Nevada Department of Taxation, 1500 College Parkway, Suite 115, Carson City, Nevada 89706, 775-684-2096, or email to efierro@tax.state.nv.us.

2. The number persons who:

(a) Attended each hearing/workshop: July 17, 2007 – 37; July 24, 2007 – 42; September 26, 2007 – 31; and November 21, 2007 – 15;

(b) Testified at each hearing/workshop: July 17, 2007 – several individuals testified at the workshop; July 24, 2007 – several individuals testified at the workshop; September 26, 2007 – several individuals testified at each workshop; and November 21, 2007 – several individuals testified at each workshop; and

(c) Submitted to the agency written comments: Several written comments and suggestions were submitted to the Department throughout the workshop process, including comments from LCB, state legislators, and the public.

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 notices posted at the Nevada State Library; various Department locations throughout the state; and at the Main Public Libraries in counties where an office of the Department is not located.

The Department and the general public commented on all of the proposed language changes during the workshop process. Members of the NTC, Department, and general public commented during the Adoption Hearing. Throughout the workshop process, local governments were generally in favor of a narrow interpretation of certain terms identified in AB 621 whereas industry was generally in favor of a more liberal interpretation of certain terms identified in AB 621.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Department at (775) 684-2063 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at efierro@tax.state.nv.us.

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.

The permanent regulation was adopted on December 3, 2007 and included many of the changes suggested at the workshop. Moreover, the Commission adopted LCB's final version without change.

5. The estimated economic effect of the adopted regulation on the businesses 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

While Assembly Bill 3 (2005 Special Session) and Assembly Bill 621 (2007 Session) created significant adverse fiscal effects to local governments, the regulation, in and of itself, presents no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public. It is anticipated the regulation is beneficial in that it promotes the administration of Assembly Bill 621 (2007 Session).

(b) Both immediate and long-term effects.

While Assembly Bill 3 (2005 Special Session) and Assembly Bill 621 (2007 Session) created significant adverse fiscal effects to local governments, the regulation, in and of itself, presents no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public, either immediately or in the long-term as the sales/use tax abatement contained in AB 3 expired by its own limitation.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The Department anticipates little, if any, additional cost to administer the regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no known state or government agency regulations that the proposed regulation duplicates. The Nevada State Office of Energy, which has its own requirements under AB 621, is working toward adopting its own set of regulations.

8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no known federal regulations regarding abatement of sales and use taxes.

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 Nevada Tax Commission is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.