

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R206-07**

Effective April 17, 2008

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

AUTHORITY: §1, NRS 360.090, 360.093, 360.417 and 360.419; §§2 and 3, NRS 360.090 and 360.419.

A REGULATION relating to taxation; revising the provisions relating to a waiver or reduction of the penalty or interest assessed for the late payment of certain taxes or fees; and providing other matters properly relating thereto.

**Section 1.** NAC 360.396 is hereby amended to read as follows:

360.396 1. The Department shall waive or reduce a penalty or interest, or both, for a late payment if the total penalty and interest for the late payment is \$15 or less.

2. The Department may waive or reduce a penalty or interest, or both, for a late payment if the late payment is determined by the Department to have been caused by circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

3. In determining whether to waive or reduce the penalty or interest, or both, for a late payment pursuant to subsection 2, the Department may consider:

- (a) The history of compliance and timely payment of the taxpayer;
- (b) The weight and sufficiency of the evidence supporting the request of the taxpayer to waive or reduce the penalty or interest, or both, for the late payment;

(c) Any evidence which shows that the late payment was caused by circumstances that were not directly related to the actions of the taxpayer or his agent, including, without limitation:

(1) Fire, earthquake, flood or other acts of God, theft, or the death or serious illness of the taxpayer or his agent or a member of the immediate family of the taxpayer;

(2) An error or the misconduct of an employee of the taxpayer ~~;~~, *including, without limitation, embezzlement;*

(3) Erroneous written information provided to the taxpayer or his agent by the Department; and

(4) The misaddressed but timely mailing of the return or payment; and

(d) Any other factor deemed by the Department to be relevant.

**Sec. 2.** NAC 360.397 is hereby amended to read as follows:

360.397 1. Except as otherwise provided in NAC 360.398, a taxpayer or his agent may request the waiver or reduction of the penalty or interest, or both, by submitting to the Department a written statement *signed under oath by the taxpayer or his agent*, which sets forth the facts and circumstances surrounding the failure of the taxpayer to make the payment in a timely manner.

2. The Department shall not consider a request made pursuant to subsection 1 ~~{unless}~~ *until* the taxpayer ~~{pays}~~ *has paid* in full the tax or fee upon which the interest or penalty is assessed. ~~{within 120 days after the date on which the payment was due.}~~

**Sec. 3.** NAC 360.398 is hereby amended to read as follows:

360.398 1. If a notice of a deficiency determination has been issued by the Department pursuant to NRS 360.350, a taxpayer who files a petition for redetermination pursuant to NRS 360.360 may:

(a) Submit, with the petition for redetermination, a written request for the waiver or reduction of the penalty or interest, or both; or

(b) Request before the conclusion of the hearing on the petition for redetermination conducted pursuant to NRS 360.370 that the hearing officer waive or reduce the penalty or interest, or both.

2. ~~[A request submitted pursuant to subsection 1 shall not be deemed to be an admission on the part of the taxpayer regarding the correctness of the tax or fee.~~

~~—3.]~~ If a taxpayer requests, pursuant to paragraph (a) of subsection 1, the waiver or reduction of the penalty or interest, or both, *and does not challenge the correctness of the tax or fee that is the subject of the deficiency determination*, the Director *or his designee* shall ~~[determine whether a hearing on the request is required. If the Director determines that:~~

~~—(a) A hearing on the request is not required, the Director shall]~~ make a determination on the request ~~[-~~

~~—(b) A hearing on the request is required, the Director shall refer the request to a hearing officer for a hearing conducted in accordance with NAC 360.095 to 360.170, inclusive.~~

~~—4.]~~ *in the manner prescribed in NAC 360.396.*

3. If a taxpayer requests ~~[-, pursuant to paragraph (b) of subsection 1,]~~ the waiver or reduction of the penalty or interest, or both, *pursuant to:*

*(a) Paragraph (a) of subsection 1 and challenges the correctness of the tax or fee that is the subject of the deficiency determination; or*

*(b) Paragraph (b) of subsection 1,*

↪ the hearing officer shall make a determination on the request as part of the adjudication of the petition for redetermination. If the hearing officer grants the request to waive or reduce the

penalty or interest, or both, the hearing officer may order that the waiver or reduction is contingent upon the requirement that the taxpayer pay the tax or fee for which the penalty or interest was assessed not more than 30 days after the issuance of the decision of the hearing officer.

~~[5.]~~ 4. A taxpayer aggrieved by a determination of the Director *or his designee* or a hearing officer regarding a request to waive or reduce the penalty or interest, or both, may appeal that determination to the Commission in the manner provided pursuant to NRS 360.245 to 360.390, inclusive.

## NOTICE OF ADOPTION OF REGULATION

The Nevada Tax Commission adopted regulations assigned LCB File No. R206-07, 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 a notice of a workshop, dated November 19, 2007, to the locations listed above. A workshop was held on Thursday, December 6, 2007. The minutes of that meeting may be obtained by writing to the Department of Taxation at 1550 College Parkway, Suite 115, Carson City, Nevada 89706. Thereafter, on or about February 1, 2008, the Executive Director of the Department of Taxation (“Executive Director”) issued a Notice of Public Hearing for the Adoption and Amendment of Permanent Regulations of the Nevada Department of Taxation, which incorporated the proposed amendments or suggestions of the parties attending the

December 6, 2007 workshop. The Commission, on or about March 3, 2008, 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](mailto:efierro@tax.state.nv.us).

**2. The number persons who:**

- (a) Attended each hearing/workshop: December 6, 2007 – 12 (Approximately);
- (b) Testified at each hearing/workshop: December 6, 2007 – 2 (Approximately);
- (c) Submitted to the agency written comments: No written comments were submitted.

**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.

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](mailto: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 March 3, 2007 and included many of the changes suggested at the workshop.

Moreover, the Commission adopted LCB's version but with two (2) changes:

- 1. In section 1, paragraph 1, the Commission substituted the word "shall" for the word "may."
- 2. In section 1, paragraph 3, subsection (c)(2), the Commission added the words "An error or misconduct" back into the existing regulation.

**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**

The proposed regulations present no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public. It is anticipated the regulations promote the administrative appeal process by assisting certain taxpayers who, under certain circumstances, have failed to timely file an appeal to the Tax Commission.

**(b) Both immediate and long-term effects.**

The proposed regulations present no reasonably foreseeable or anticipated immediate or long-term economic effects to businesses or to the general public.

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

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

**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 amendments duplicate.

**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 the waiver of penalty and interest.

**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.