

LCB File No. R206-07

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 360.419

A REGULATION relating to taxation; revising the provisions relating to the consideration of requests for a waiver of interest or penalty.

Section 1. NAC 360.396 is hereby amended as provided in section 2 of this regulation.

Sec. 2. 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]~~ ~~[m]~~ Misconduct of an employee of the taxpayer, *including, without limitation, embezzlement or theft*;
 - (3) Erroneous written information provided to the taxpayer or his agent by the Department; ~~[and]~~ *or*
 - (4) The misaddressed but timely mailing of the return or payment; ~~[and]~~ *or*
 - (d) Any other factor deemed by the Department to be relevant.

Sec. 3. NAC 360.397 is hereby amended as provided in section 4 of this regulation.

Sec. 4. ~~[I.]~~ Except as otherwise provided in NAC 360.398~~[.]~~:

1. A ~~[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*, 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 *has paid* ~~[pays]~~ 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. 5. NAC 360.398 is hereby amended as provided in section 6 of this regulation.

Sec. 6. 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, *in addition to challenging the correctness of the tax or fee*:

(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. Although filed in response to a notice of deficiency determination, a petition or request that does not challenge the correctness of the tax or fee but merely requests a waiver or reduction of the penalty or interest, or both, shall be treated as a request for a waiver of penalty or interest, or both, in accordance with NRS 360.419 and NAC 360.397. In this circumstance, the Executive Director, or his designee, shall determine whether or not a waiver of penalty or interest, or both, is warranted. A taxpayer, pursuant to NRS 360.245, may appeal the decision directly to the Nevada Tax Commission.

~~[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, the Director 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.]~~ 3. If a taxpayer requests, pursuant to paragraph ~~[(b) of subsection]~~ 1, the waiver or reduction of the penalty or interest, or both, 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. A taxpayer aggrieved by a determination of the Director 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.]~~