

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R202-08

Effective October 15, 2010

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

AUTHORITY: §§1-5, NRS 360.090 and 360.2915.

A REGULATION relating to taxation; revising provisions governing the payment of taxes, interest and penalties in installments; and providing other matters properly relating thereto.

Section 1. NAC 360.450 is hereby amended to read as follows:

360.450 1. Except as otherwise provided in NAC 360.456 *and 360.460* and subject to the approval of the Director or his designee, the Department may enter into an agreement with a taxpayer, upon the request of the taxpayer, that allows the taxpayer to pay taxes, interest and penalties in installments over a period of 12 months or less if:

(a) The taxpayer submits accurate and complete information that the Department requires to determine whether to enter *into* the agreement;

(b) The taxpayer agrees in writing that he will comply with all ~~[the provisions of the]~~ *applicable* laws and regulations of the Commission during the period in which the agreement is in effect, including, without limitation, reporting and payment requirements;

(c) *The taxpayer agrees in writing that the agreement may be terminated immediately if the taxpayer fails timely to make any payment required by the agreement or defaults in any other reporting or payment requirement;*

(d) The Department determines that as of the date on which the taxpayer requested to enter into the agreement, the taxpayer is unable to pay the entire amount of taxes, interest and penalties due for financial reasons; and

~~[(d)]~~ (e) The amount owed by the taxpayer on the date on which he requested to enter into the agreement does not exceed the amount set by the Commission pursuant to NAC 360.454.

2. The Department may deny a request to enter into an agreement pursuant to subsection 1 if the taxpayer has not complied with a previous agreement with the Department to pay taxes, interest and penalties in installments.

Sec. 2. NAC 360.452 is hereby amended to read as follows:

360.452 1. An agreement to pay taxes, interest and penalties in installments pursuant to NAC 360.450 or 360.456 must:

(a) Be in writing.

(b) Except as otherwise provided in this paragraph, contain a personal guaranty by two responsible persons in their individual capacities. If there is only one responsible person, the agreement must contain the personal guaranty of that person in his individual capacity. *In lieu of or in addition to any personal guaranty required by this paragraph, the Department may require a personal guaranty of any other person agreed upon by the taxpayer and the Department.*

(c) Be accompanied by the initial payment required by the terms of the agreement.

2. As used in this section, “responsible person” has the meaning ascribed to it in subsection 2 of NRS 360.297.

Sec. 3. NAC 360.456 is hereby amended to read as follows:

360.456 1. *Except as otherwise provided in NAC 360.460, the Director may, for good cause shown, upon the request of a taxpayer who satisfies the requirements set forth in NAC 360.450, authorize the Department to enter into an agreement with the taxpayer that allows the taxpayer to pay taxes, interest and penalties in installments over a period of more than 12 months.*

2. As used in this section, “good cause” includes, without limitation, circumstances that would prevent a taxpayer from paying the taxes, interest and penalties in a period of *12 months* ~~or less . [than 12 months.~~

~~—2.— The Director may, for good cause shown, authorize the Department to enter into an agreement upon the request of a taxpayer that allows the taxpayer to pay taxes, interest and penalties in installments over a period of more than 12 months if, in addition to satisfying the requirements set forth in NAC 360.450, the taxpayer provides security in a form set forth in subsection 4 that has been verified by the Department.~~

~~—3.— If the Department receives a request for an agreement pursuant to this section from a taxpayer who is unable to provide the security required pursuant to subsection 2, the Department shall review the request and transmit the request and the recommendation of the Department regarding the request to the Commission. The Commission may authorize the Department to enter into an agreement pursuant to this section with such a taxpayer.~~

~~—4.— The Department will accept as security pursuant to this section only:~~

~~—(a) Cash;~~

~~—(b) Time certificates or certificates of deposit that are issued or confirmed by a bank, savings bank or savings and loan association situated in this State;~~

- ~~—(c) Passbook savings accounts located in a bank, savings bank or savings and loan association situated in this State;~~
- ~~—(d) Surety bonds executed by an insurance company pursuant to NRS 100.065;~~
- ~~—(e) Bearer bonds issued by the United States, except savings bonds;~~
- ~~—(f) Liens upon real property created by a recorded instrument that vests the lien in the State of Nevada;~~
- ~~—(g) Irrevocable letters of credit that are issued or confirmed by a bank, savings bank or savings and loan association situated in this State upon conditions prescribed by the Department;~~
- ~~or~~
- ~~—(h) A perfected, first priority security interest created pursuant to the provisions of NRS 104.9101 to 104.9628, inclusive, which is in personal property located in this State and which designates the State of Nevada as the secured party.]~~

Sec. 4. NAC 360.460 is hereby amended to read as follows:

360.460 If the Department receives a request for an agreement pursuant to NAC 360.450 or 360.456 from a taxpayer whose tax liability exceeds the amount set by the Commission pursuant to NAC 360.454 ~~[.]~~ *or whose proposed period of installment payments exceeds 24 months*, the Department shall review the request and transmit the request and the recommendation of the Department regarding the request to the Commission. The Commission may authorize the Department to enter into an agreement with such a taxpayer pursuant to NAC 360.450 or 360.456.

Sec. 5. NAC 360.462 is hereby amended to read as follows:

360.462 1. The Department may terminate an agreement entered into pursuant to NAC 360.450 or 360.456 if the Department determines:

- (a) The taxpayer has not complied with the terms of the agreement;
- (b) The taxpayer provided to the Department incomplete or inaccurate information on which the Department based its determination to enter the agreement; or
- (c) The financial conditions of the taxpayer have changed such that the taxpayer has the ability to pay the full amount of taxes, interest and penalties owed.

2. ~~{Except as otherwise provided in subsection 3, if}~~ *If* the Department determines to terminate an agreement pursuant to *paragraph (b) or (c) of* subsection 1, the Department shall provide the taxpayer with ~~{a}~~ *written* notice of its intention to terminate the agreement at least 10 days before the date on which the Department intends to terminate the agreement. The notice must contain an explanation of the decision of the Department to terminate the agreement.

3. The Department ~~{is not required to provide notice of its intention to terminate an agreement entered into pursuant to NAC 360.450 or 360.456 if:~~

~~—(a) The Department determines that the collection of a tax pursuant to the agreement is in jeopardy pursuant to NRS 360.412; or~~

~~—(b) Mutual}~~ *may terminate, alter or modify an agreement entered into pursuant to NAC 360.450 if mutual* consent to terminate, alter or modify the agreement exists between the Department and the taxpayer.

4. If an agreement is terminated pursuant to this section, the total amount covered by the agreement, including, without limitation, ~~{tax,}~~ *taxes*, interest and penalties, is due on the date on which the agreement terminates.

~~{5.—Except as otherwise provided in this subsection, an appeal of a decision to terminate an agreement must be filed in writing with the Department within 30 days after the date on which the agreement terminates. An appeal of a decision to terminate an agreement for which the~~

~~Department determined that the collection of the tax was in jeopardy pursuant to paragraph (a) of subsection 3 must be filed in writing with the Department within 10 days after the agreement terminates.~~

~~—6.— A hearing officer shall conduct a hearing on an appeal pursuant to this section in the same manner set forth in NAC 360.095 to 360.170, inclusive, for a hearing on a petition for redetermination.~~

~~—7.— If a taxpayer does not file an appeal after receiving a notice of termination of the agreement, the decision of the Department is final and the Department may take any action authorized by law to collect the amount covered by the agreement, including, without limitation, tax, interest and penalties.]~~

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

LCB FILE R202-08

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 360.

- 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 leasing tangible personal property 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 notices of a workshop, dated August 13, 2009 to the locations listed above. One workshop was held on September 4, 2009. 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. On May 24, 2009, the Executive Director of the Department of Taxation (“Executive Director”) issued a Notice of Intent to Act Upon a Regulation, with the intent to adopt R202-08 as a permanent regulation. The Commission, on June 24, 2010, 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: September 4, 2009 –6 persons.

(b) Testified at each hearing/workshop: A few individuals testified at the workshop/hearing.

(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. In summary, no members of the public testified in opposition to the proposed changes.

Moreover, members of the Nevada Tax Commission and staff to the Department 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**.

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 June 24, 2010, which did not include any changes to the draft dated May 12, 2010 that was provided to the Department by LCB Legal.

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 that the modified regulations will assist the Department and taxpayers in streamlining the payment of taxes via the installment method.

(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 regulation duplicates.

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 request for a closed hearing.

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.