

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R203-08

May 12, 2010

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

AUTHORITY: §§1 and 2, NRS 360.090, 372.510, 372.725 and 374.515; §3, NRS 360.090, 372.397, 372.510 and 372.725.

A REGULATION relating to taxation; revising provisions governing the security that a person who holds a permit to collect sales tax must deposit with the Department of Taxation; and providing other matters properly relating thereto.

Section 1. NAC 372.825 is hereby amended to read as follows:

372.825 1. Except as otherwise provided in subsection ~~[3]~~ *2* and NRS 377B.210, a person who obtains a permit to collect sales tax after July 1, 1985, shall deposit with the Department security in an amount equal to twice the estimated average tax due quarterly ~~[, or]~~ *if the person files returns for quarterly periods*, three times the estimated average tax due monthly if ~~[he]~~ *the person* files ~~[monthly returns, but not less than \$100.~~

~~—2.— Any person holding a permit in good standing on July 1, 1985, who becomes delinquent or files a late return or whose check tendered as payment is dishonored, shall deposit additional security with the Department pursuant to subsection 1.~~

~~—3.— Unless habitually delinquent, an organization which obtains a permit to collect sales tax will not be required to deposit with the Department the security required by subsection 1 if the Department determines that it is entitled to the exemption from tax on its purchases of tangible~~

~~personal property pursuant to NRS 372.326.]~~ *returns for monthly periods or four times the estimated average tax due annually if the person files returns for annual periods.*

2. A person is not required to deposit security with the Department pursuant to subsection 1 if the amount of security required pursuant to subsection 1 does not exceed \$1,000.

3. The Department may reexamine the amount of security required by subsection 1 after a business has been in operation for at least 6 months to determine if the original estimated average tax due is accurate. If the Department determines that the original estimated average tax due is not accurate, the Department may adjust the amount of security required pursuant to subsection 1.

4. Except as otherwise provided in subsection 5, after a business that files returns for quarterly or monthly periods has been in operation for at least 12 months, the Department shall not increase the amount of security required pursuant to subsection 1 based solely on business volume or an increase in the tax rate.

5. If the Department determines that a person knowingly made false statements relating to sales volume to minimize the amount of security required pursuant to subsection 1, the Department may increase the amount of security required pursuant to subsection 1 based on the actual tax due quarterly, monthly or annually.

*6. The Department shall require ~~[such an organization which]~~ any person who is habitually delinquent to deposit with the Department *additional* security ~~[in an amount equal to three times the average actual tax due quarterly if the organization files its returns quarterly, or five times the average actual tax due monthly if the organization files its returns for monthly periods. —4.]~~ pursuant to NRS 372.510 and 374.515.*

7. If a person who files returns for quarterly periods becomes habitually delinquent, the Department shall require the person to file returns for monthly periods.

8. A person may, if the person's business has been in operation for at least 12 months, submit a written request to the Department for a reexamination of the person's tax-filing history to determine if a reduction in security is warranted pursuant to subsection 1.

9. 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.

~~[(e) Bearer bonds of the United States, except savings bonds.~~

~~(f)]~~ (c) Liens upon real property created by a recorded instrument vesting the lien in the State of Nevada.

~~[(g)]~~ (d) Irrevocable letters of credit which are issued or confirmed by a bank, savings bank , *credit union* or savings and loan association situated in the State of Nevada upon the conditions prescribed by the Department.

10. A person may submit a request for a waiver of the security required by this section to the Director, who shall forward the request to the Commission. The Commission will consider the request and may grant such a waiver if the person satisfies the following requirements:

(a) If the person is not a corporate taxpayer, the person must have a satisfactory payment record.

(b) If the person is a corporate taxpayer, the person must have a satisfactory payment record and substitute for any other form of security required by this section:

- (1) The personal surety of not less than two principals of the corporate taxpayer; or*
- (2) If the corporate taxpayer consists of only one principal, the personal surety of that principal in his or her individual capacity.*

11. A waiver granted by the Commission pursuant to this section may be cancelled if the person becomes habitually delinquent.

12. If a business structure changes through incorporation or otherwise, but the principals or officers of the business remain substantially the same, the Department shall consider the reporting history of the previous business structure in determining the security requirements applicable to the new business structure.

13. As used in this section, unless the context otherwise requires:

(a) “Corporate taxpayer” includes, without limitation, a corporation, limited-liability company, business trust and limited partnership, including a partnership that consists of corporations.

(b) “Satisfactory payment record” means a record of tax payments that includes not more than one delinquency, late return, returned check or return filed without full payment of the tax due during the immediately preceding 36-month period.

Sec. 2. NAC 372.826 is hereby amended to read as follows:

372.826 As used in NRS 372.510 and NAC 372.825, the Commission will interpret the term “habitually delinquent” to mean having two or more delinquencies, late payments , ~~for~~ returned checks *or returns showing tax due that were filed without payment of the full tax due, or any*

combination thereof, in the 12 consecutive months immediately preceding the date on which the Department investigates the matter.

Sec. 3. NAC 372.827 is hereby amended to read as follows:

372.827 1. Each person who qualifies for the deferral of taxes pursuant to NRS 372.397 shall establish with the Department security that is equal to his tax liability.

2. The Department may accept as security pursuant to subsection 1:

(a) The security set forth in subsection ~~4~~ 9 of NAC 372.825; or

(b) A perfected, first priority security interest that designates the State of Nevada as the secured party and is created pursuant to the provisions of NRS 104.9101 to 104.9709, inclusive, in personal property that is located in this State.