

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R058-11

October 24, 2011

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

AUTHORITY: §§1-7 and 9-15, NRS 360.090 and 362.120; §8, NRS 360.090 and 362.110;
§§16-18, NRS 360.090.

A REGULATION relating to the taxation of minerals; revising the provisions governing the determination of the net proceeds of minerals; and providing other matters properly relating thereto.

Section 1. Chapter 362 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 362.005 and sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *1. Except as otherwise provided in subsection 2, “developmental work” means any activities performed on the property of a mine which outline the location of the mineral reserves of the mine or prepare the mineral reserves of the mine for production, including, without limitation, drilling, rock work and the construction of support systems to increase the mineral reserves of the mine.*

2. The term does not include any mineral exploration.

Sec. 4. *“Mineral exploration” means any activities relating to the search for mineral reserves which do not occur during the development or production stages of a mine, including*

drilling, sampling, assaying, metallurgical testing, engineering studies, studies of economic feasibility and procedures to obtain appropriate permits.

Sec. 5. *“Mineral reserves” means the portion of a measured or indicated mineral resource that has been analytically determined to justify mining, taking into account, at the time of that determination, any mining, metallurgical, marketing, legal, environmental, social, economic and other conditions which apply to that determination.*

Sec. 6. *For the purposes of:*

1. Paragraph (j) of subsection 3 of NRS 362.120, the Nevada Tax Commission will interpret the term “developmental work” to have the meaning ascribed to it in section 3 of this regulation.

2. Paragraph (c) of subsection 7 of NRS 362.120, the Nevada Tax Commission will interpret the term “costs of severing the employment of any employees” to:

(a) Exclude, without limitation, the costs of:

(1) Any wages or salary earned by an employee before the date of termination of his or her employment; and

(2) Any pension benefits, vacation leave and sick leave accrued by an employee before the date of termination of his or her employment; and

(b) Include, without limitation, the costs of any:

(1) Additional payments based on length of service;

(2) Cash bonuses;

(3) Stock options;

(4) Medical insurance, dental insurance and life insurance;

(5) Payments made in lieu of a required period of notice;

(6) Negotiated financial sums paid pursuant to an agreement absolving the employer from any further liability to an employee;

(7) Voluntary redundancy packages offered by an employer to attract volunteers to leave the employment of the employer; and

(8) Assistance in searching for new positions of employment.

3. Paragraph (f) of subsection 7 of NRS 362.120, the Nevada Tax Commission will interpret the term “mineral exploration” to have the meaning ascribed to it in section 4 of this regulation.

Sec. 7. NAC 362.005 is hereby amended to read as follows:

362.005 ~~[As used in this chapter, unless the context otherwise requires,]~~ “Department” means the Department of Taxation.

Sec. 8. NAC 362.030 is hereby amended to read as follows:

362.030 1. All information in the statement which is required by NRS 362.110 to be filed must be submitted on forms supplied by the Department or in a manner which is acceptable to the Department.

2. The following property must be reported:

(a) Leasehold improvements and buildings ; ~~[that are owned and maintained by the operator of the mine for use as housing for employees;]~~

(b) Fixed machinery and equipment;

(c) Mobile machinery and equipment; and

(d) Automobiles and light service vehicles such as pickups and panel trucks.

3. Each cost submitted for depreciation must be the complete cost to the taxpayer, and must include all delivery, taxes and installation charges.

4. Each asset must be listed on a table which sets forth:
 - (a) A clear identification of the asset;
 - (b) The cost of the construction or acquisition of the asset and the date on which the construction of the asset was completed or the asset was acquired;
 - (c) The depreciation class, such as buildings, fixed equipment, mobile machinery and equipment, or automobile and light service vehicles;
 - (d) The total amount of depreciation granted; and
 - (e) The amount claimed for the present tax period.
- ↪ An integrated processing assembly which consists of components of individual manufacture, and which is installed as a unit, may be reported as a unit. The report must describe the function of the unit and list its principal components in detail.

Sec. 9. NAC 362.050 is hereby amended to read as follows:

NEW FIRST
PARALLEL
SECTION

362.050 1. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are deductible except as limited by *subsection 2 of this section and subsection 6 of NRS 362.120*:

- (a) The cost of renting equipment, if the amount paid as rental is commercially reasonable in the circumstances;
- (b) The cost of contracting for all or part of the mine's operations, if the contract price is commercially reasonable in the circumstances ~~and~~ *and the cost would otherwise be deductible if the service or activity contracted for was provided or performed directly by the operator of the mine;*

(c) The cost of *Nevada-based corporate* services , *as defined in subsection 8 of NRS 362.120*, which a Nevada mine receives under contract from its corporate office or the office of a related corporation, if:

(1) The cost is commercially reasonable in the circumstances; and

(2) The cost is separately stated in a manner consistent with good accounting practices;

(d) The reasonable cost of management provided to a joint venture by a member, if the fees relate directly to *the* operation of the mine;

~~(e) [The sales and use taxes expended for tangible goods or taxable services to the extent that the cost of such goods or services is an allowable operating cost;~~

~~—(f) The direct cost of housing for employees that is owned and maintained by the operator of the mine, including, without limitation, any losses to the housing that are incurred by the operator of the mine, but as reduced by any payments received for rental of the property;~~

~~—(g) If the taxpayer has a policy which prohibits the personal use of a vehicle by an employee, the cost of vehicle allowances to the extent that the vehicle is actively engaged in the business of the mine;~~

~~(h) (f) The cost of transportation services *between points of origin and destination within this State* provided by a third party or the owner of the mine for employees to get to and from a point of extraction or reduction of the mine [;], *excluding any cost for the repair, maintenance and depreciation of any facilities or equipment under the jurisdiction of the Public Utilities Commission of Nevada or the Nevada Transportation Authority*; and~~

~~(i) (g) The cost of compensation for employees. As used in this paragraph, “compensation” means wages, salaries, paid vacation leave, paid sick leave, performance-related bonuses, contributions to and administrative costs of qualified pension and retirement plans, 401k and~~

similar deferred benefit plans, ~~[dental insurance, medical insurance, accidental death and dismemberment insurance,]~~ Medicare contributions, social security payments, ~~[medical clinic and hospital expenses,]~~ state and federal unemployment compensation contributions or payments, ~~[workers' compensation insurance,]~~ and postemployment training expenses for training conducted in compliance with the Mine Safety and Health Administration and the Division of Industrial Relations of the Department of Business and Industry or their successor organizations.

2. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are not deductible:

- (a) Cost or expenses which are capitalized;
- (b) Gifts, grants and donations;
- (c) Costs of public relations and influencing or seeking to influence governmental activities;
- (d) Costs of ~~[exploration and development]~~ *developmental work* related to ore bodies outside the geographic area ~~[which can economically provide a source of raw materials to the plant located at the mine;]~~ *described in the plan for the mine filed with the Division of Minerals of the Commission on Mineral Resources pursuant to NRS 519A.210;*
- (e) ~~[Federal income taxes, all property taxes, the business license tax imposed pursuant to chapter 364A of NRS, the tax on net proceeds of minerals and, except as otherwise provided in paragraph (e) of subsection 1, any other]~~ *Any* tax that an operator of a mine is required to pay to the Federal Government, this State or any other state, or a political subdivision thereof;
- (f) Costs associated with providing health clubs for employees;
- (g) ~~[Except as otherwise provided in paragraph (f) of subsection 1 of this section and paragraph (a) of subsection 2 of NAC 362.030, costs]~~ *Costs* incurred for preemployment

activities, including, without limitation, reimbursement for expenses for ~~housing,~~ moving and relocation;

(h) Except as otherwise provided in paragraph ~~(f)~~ (g) of subsection 1, costs associated with union trust funds;

(i) Costs associated with providing day care facilities for the children of employees;

(j) General liability insurance; ~~and~~

(k) Excess policies of general liability insurance ~~;~~;

(l) Fire insurance on any machinery, equipment, apparatus, works, plants or facilities; and

(m) Expenses described in subsection 7 of NRS 362.120.

3. If a cost is partially deductible and partially nondeductible, the deductible portion must be allowed. In determining the portion of such costs which is allowable as a deduction, a reasonable allocation must be made based upon available information. *For the purposes of paragraph (b) of subsection 1, there is a rebuttable presumption that not less than 20 percent of the cost of contracting for all or part of a mine's operations is attributable to the cost of services and activities that would not be deductible if provided or performed directly by the operator of the mine.*

Sec. 10. NAC 362.050 is hereby amended to read as follows:

NEW
SECOND
PARALLEL
SECTION

362.050 1. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are deductible except as limited by subsection 2 of this section and subsection 6 of NRS 362.120:

(a) The cost of renting equipment, if the amount paid as rental is commercially reasonable in the circumstances;

(b) The cost of contracting for all or part of the mine’s operations, if the contract price is commercially reasonable in the circumstances and the cost would otherwise be deductible if the service or activity contracted for was provided or performed directly by the operator of the mine;

(c) The cost of Nevada-based corporate services, as defined in subsection 8 of NRS 362.120, which a Nevada mine receives under contract from its corporate office or the office of a related corporation, if:

(1) The cost is commercially reasonable in the circumstances; and

(2) The cost is separately stated in a manner consistent with good accounting practices;

(d) The reasonable cost of management provided to a joint venture by a member, if the fees relate directly to the operation of the mine;

(e) If the taxpayer has a policy which prohibits the personal use of a vehicle by an employee, the cost of vehicle allowances to the extent that the vehicle is actively engaged in the business of the mine;

(f) The cost of transportation services between points of origin and destination within this State provided by a third party or the owner of the mine for employees to get to and from a point of extraction or reduction of the mine, excluding any cost for the repair, maintenance and depreciation of any facilities or equipment under the jurisdiction of the Public Utilities Commission of Nevada or the Nevada Transportation Authority; and

(g) The cost of compensation for employees. As used in this paragraph, “compensation” means wages, salaries, paid vacation leave, paid sick leave, performance-related bonuses, contributions to and administrative costs of qualified pension and retirement plans, 401k and similar deferred benefit plans, Medicare contributions, social security payments, state and federal unemployment compensation contributions or payments, and postemployment training expenses

for training conducted in compliance with the Mine Safety and Health Administration and the Division of Industrial Relations of the Department of Business and Industry or their successor organizations.

2. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are not deductible:

- (a) Cost or expenses which are capitalized;
- (b) Gifts, grants and donations;
- (c) Costs of public relations and influencing or seeking to influence governmental activities;
- (d) Costs of developmental work related to ore bodies outside the geographic area described in the plan for the mine filed with the Division of Minerals of the Commission on Mineral Resources pursuant to NRS 519A.210;
- (e) Any tax that an operator of a mine is required to pay to the Federal Government, this State or any other state, or a political subdivision thereof;
- (f) Costs associated with providing health clubs for employees;
- (g) Costs incurred for preemployment activities, including, without limitation, reimbursement for expenses for moving and relocation;
- (h) Except as otherwise provided in paragraph (g) of subsection 1 ~~1~~ *of this section and paragraph (g) of subsection 3 of NRS 362.120*, costs associated with union trust funds;
- (i) Costs associated with providing day care facilities for the children of employees;
- (j) General liability insurance;
- (k) Excess policies of general liability insurance;
- (l) Fire insurance on any machinery, equipment, apparatus, works, plants or facilities; and
- (m) Expenses described in subsection 7 of NRS 362.120.

3. If a cost is partially deductible and partially nondeductible, the deductible portion must be allowed. In determining the portion of such costs which is allowable as a deduction, a reasonable allocation must be made based upon available information. For the purposes of paragraph (b) of subsection 1, there is a rebuttable presumption that not less than 20 percent of the cost of contracting for all or part of a mine's operations is attributable to the cost of services and activities that would not be deductible if provided or performed directly by the operator of the mine.

Sec. 11. NAC 362.200 is hereby amended to read as follows:

362.200 As used in NAC 362.200 to ~~362.330,~~ **362.310**, inclusive, unless the context otherwise requires, the words and terms defined in NAC 362.210 to 362.290, inclusive, have the meanings ascribed to them in those sections.

Sec. 12. NAC 362.310 is hereby amended to read as follows:

NEW FIRST
PARALLEL
SECTION

362.310 ~~1. A taxpayer who reports a deduction pursuant to subsection 1 of NAC 362.300 according to an accrual method of accounting may claim a deduction for qualified reclamation costs which are incurred during the reporting period in an amount equal to the amount calculated by:~~

~~—(a) If the taxpayer has not performed concurrent reclamation during the reporting period:~~

~~—(1) Dividing the number of units of production from the mine which were sold during the reporting period by the total number of units of production which are determined by the operator of the mine at the beginning of the reporting period to be available to be recovered for the reporting period;~~

~~—(2) Subtracting the cumulative amount of any deductions for reclamation performed by the taxpayer in the previous reporting periods from the qualified reclamation costs; and~~

~~—— (3) Multiplying the amount calculated pursuant to subparagraph (1) by the amount calculated pursuant to subparagraph (2).~~

~~—— (b) If the taxpayer has performed concurrent reclamation during the reporting period:~~

~~—— (1) Dividing the number of units of production from the mine which were sold during the reporting period by the total number of units of production which are determined by the operator of the mine at the beginning of the reporting period to be available to be recovered for the reporting period;~~

~~—— (2) Subtracting the cumulative amount of any money paid for concurrent reclamation during the previous reporting periods from the qualified reclamation costs;~~

~~—— (3) Subtracting the cumulative amount of any deductions for reclamation performed by the taxpayer in the previous reporting periods, minus the cumulative amount of any money paid for concurrent reclamation during the previous reporting periods, from the amount calculated pursuant to subparagraph (2);~~

~~—— (4) Multiplying the amount calculated pursuant to subparagraph (1) by the amount calculated pursuant to subparagraph (3); and~~

~~—— (5) Subtracting the amount of any money paid for concurrent reclamation during the current reporting period from the amount calculated pursuant to subparagraph (3).~~

~~—2.] A taxpayer [who reports a deduction pursuant to subsection 2 of NAC 362.300 according to a cash method of accounting] may claim a deduction *pursuant to paragraph (k) of subsection 3 of NRS 362.120* for any money paid during the reporting period for reclamation performed by the taxpayer.~~

~~[3. — As used in this section, “concurrent reclamation” means reclamation that is performed by the taxpayer during the reporting period for which the taxpayer is calculating his or her~~

~~deduction according to an accrual method of accounting for qualified reclamation costs which are incurred during the reporting period.]~~

Sec. 13. NAC 362.310 is hereby amended to read as follows:

NEW
SECOND
PARALLEL
SECTION

362.310 A taxpayer may claim a deduction pursuant to paragraph ~~(k)~~ (l) of subsection 3 of NRS 362.120 for any money paid during the reporting period for reclamation performed by the taxpayer.

Sec. 14. Section 6 of this regulation is hereby amended to read as follows:

Sec. 6. For the purposes of:

1. Paragraph ~~(j)~~ (k) of subsection 3 of NRS 362.120, the Nevada Tax Commission will interpret the term “developmental work” to have the meaning ascribed to it in section 3 of this regulation.

2. Paragraph (c) of subsection 7 of NRS 362.120, the Nevada Tax Commission will interpret the term “costs of severing the employment of any employees” to:

(a) Exclude, without limitation, the costs of:

(1) Any wages or salary earned by an employee before the date of termination of his or her employment; and

(2) Any pension benefits, vacation leave and sick leave accrued by an employee before the date of termination of his or her employment; and

(b) Include, without limitation, the costs of any:

(1) Additional payments based on length of service;

(2) Cash bonuses;

(3) Stock options;

(4) Medical insurance, dental insurance and life insurance;

- (5) Payments made in lieu of a required period of notice;
- (6) Negotiated financial sums paid pursuant to an agreement absolving the employer from any further liability to an employee;
- (7) Voluntary redundancy packages offered by an employer to attract volunteers to leave the employment of the employer; and
- (8) Assistance in searching for new positions of employment.

3. Paragraph (f) of subsection 7 of NRS 362.120, the Nevada Tax Commission will interpret the term “mineral exploration” to have the meaning ascribed to it in section 4 of this regulation.

Sec. 15. NAC 362.220, 362.230, 362.240, 362.260, 362.300, 362.320 and 362.330 are hereby repealed.

Sec. 16. Sections 1 to 6, inclusive, 9, 11, 12 and 15 of this regulation:

- 1. Do not apply to or affect any determination of gross yield or net proceeds required pursuant to NRS 362.100 to 362.240, inclusive, for the calendar year 2011.
- 2. Apply for the purposes of estimating and determining gross yield and net proceeds pursuant to NRS 362.100 to 362.240, inclusive, for the calendar year 2012 and each calendar year thereafter.

Sec. 17. Sections 10, 13 and 14 of this regulation:

- 1. Do not apply to or affect any determination of gross yield or net proceeds required pursuant to NRS 362.100 to 362.240, inclusive, for the calendar year 2013.
- 2. Apply for the purposes of estimating and determining gross yield and net proceeds pursuant to NRS 362.100 to 362.240, inclusive, for the calendar year 2014 and each calendar year thereafter.

Sec. 18. 1. This section and sections 1 to 7, inclusive, 9, 11, 12, 15 and 16 of this regulation become effective on January 1, 2012.

2. Section 8 of this regulation becomes effective on July 1, 2012.

3. Sections 10, 13, 14 and 17 of this regulation become effective on January 1, 2014.

TEXT OF REPEALED SECTIONS

362.220 “Commission” defined. (NRS 360.090, 362.120) “Commission” means the Nevada Tax Commission.

362.230 “Developmental work” defined. (NRS 360.090, 362.120) “Developmental work” means any activity performed on the property of a mine which outlines the location of the ore of the mine and prepares the ore for production, including, without limitation, drilling, rock work and construction of support systems to increase the ore reserves of the mine.

362.240 “Qualified reclamation costs” defined. (NRS 360.090, 362.120) “Qualified reclamation costs” means an amount equal to 90 percent of the reclamation costs.

362.260 “Reclamation costs” defined. (NRS 360.090, 362.120) “Reclamation costs” means the costs of performing reclamation over the life of the mine which are set forth in the reclamation plan. The term excludes costs for the following:

1. Any costs of administration that may be required by a state or federal agency which regulates the reclamation of the mine, including, without limitation, costs related to:

(a) Plans for engineering, design or construction;

- (b) Contingency allowances;
- (c) Profits of contractors;
- (d) Liability insurance;
- (e) Payment and performance of bonds; and
- (f) Any other direct or indirect costs for the administration of contracts with the state or federal agency.

2. Any costs that may be required after the closure of the mine, including, without limitation, costs that may be required to:

- (a) Maintain, monitor or evaluate the site of the mine;
- (b) Monitor the quality of surface water and groundwater and the impacts of the mine on the environment which receives surface water or groundwater;
- (c) Stabilize and control the erosion of structures that will remain on the site; and
- (d) Maintain land use and aesthetics of the site.

3. Any costs that may be necessary to ameliorate any social and economic impacts which result from a decline in the economic potential of an area affected by the mine or the burden on future generations to maintain the site of the mine.

362.300 “Actual cost of extracting the mineral” interpreted. (NRS 360.090, 362.120)

For the purposes of paragraph (a) of subsection 3 of NRS 362.120, the Commission interprets deductions from net proceeds of extracted minerals for the “actual cost of extracting the mineral” by a taxpayer to include:

1. If the taxpayer reports deductions according to an accrual method of accounting, a deduction for qualified reclamation costs which are incurred during the reporting period and which must be calculated pursuant to subsection 1 of NAC 362.310.

2. If the taxpayer reports deductions according to a cash method of accounting, a deduction for any money paid during the reporting period for reclamation performed by the taxpayer.

362.320 Change in method of accounting. (NRS 360.090, 362.120)

1. A taxpayer who has reported deductions for reclamation costs or qualified reclamation costs according to an accrual method of accounting in a reporting period may not change his or her method of accounting to a cash method of accounting in a subsequent reporting period.

2. Except as otherwise provided in this subsection, a taxpayer who has reported deductions for reclamation costs or qualified reclamation costs according to a cash method of accounting in a reporting period may not change his or her method of accounting to an accrual method of accounting in a subsequent reporting period unless the Department, upon written application of the taxpayer, approves a change in the method of accounting. If the taxpayer demonstrates to the Department that a proposed change in the method of accounting will not result in the double counting of any deductions for reclamation costs or qualified reclamation costs for that reporting period, the Department may approve the change in the method of accounting.

362.330 Deductions following sale of mine. (NRS 360.090, 362.120) Except as otherwise provided in this section, if a taxpayer sells the assets of a mine before closure of the mine, the buyer must report any deductions for reclamation costs or qualified reclamation costs according to the same method of accounting used by the seller, unless the Department, upon written application of the taxpayer, approves a change in the method of accounting. If the buyer demonstrates to the Department that a proposed change in the method of accounting will not result in a deduction for qualified reclamation costs or reclamation costs which have been previously deducted by the seller, the Department may approve the change in the method of accounting.

