

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R172-12**

Effective December 23, 2013

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

AUTHORITY: §§1-4, NRS 360.090 and 362.120.

A REGULATION relating to taxation; repealing the provisions regarding the accelerated depreciation of certain capitalized costs to determine the net proceeds of minerals; and providing other matters properly relating thereto.

**Section 1.** NAC 362.040 is hereby amended to read as follows:

362.040 1. ~~Except as otherwise provided by NAC 362.100 to 362.160, inclusive, leasehold~~ *Leasehold* improvements and buildings must be depreciated over a 20-year period using the straight-line method.

2. ~~Except as otherwise provided by NAC 362.100 to 362.160, inclusive, fixed~~ *Fixed* machinery and equipment must be depreciated over a 20-year period using the straight-line method.

3. Mobile machinery and equipment must be depreciated over a 10-year period using the straight-line method.

4. Automobiles and light service vehicles must be depreciated over a 5-year period using the straight-line method.

5. ~~Except as otherwise provided by NAC 362.100 to 362.160, inclusive, an~~ *An* integrated processing assembly must be depreciated over a 20-year period using the straight-line method.

Subsequent additions to the unit must also be reported and be depreciated over a 20-year period using the straight-line method.

6. If any property is disposed of before the end of the depreciation period, the remaining amount of allowable depreciation, if the property had remained in use, may be reported in total as an additional expense of depreciation for the reporting period. The amount of depreciation must be reduced by the amount of any consideration received for the property from sale, insurance recovery, trade-in or any other reimbursement, but not below zero.

7. A mining operator may petition the Nevada Tax Commission for reconsideration of the allowable depreciation of property. The Commission may adjust the allowable depreciation if the petitioner presents satisfactory evidence that the expected life of the property is longer than that which is provided for in this section. ~~If the Commission finds that the petitioner has presented satisfactory evidence that the expected life of the property is shorter than that which is provided for in this section, the petitioner must comply with the provisions of NAC 362.100 to 362.160, inclusive, to apply for permission to depreciate the property in the accelerated manner prescribed by NAC 362.140.~~

**Sec. 2.** NAC 362.368 is hereby amended to read as follows:

362.368 1. To assess and tax the net proceeds of an operating facility which extracts geothermal resources, the gross yield of the geothermal resources must be determined pursuant to this section.

2. If the transaction involves the direct, arms-length sale of the geothermal resource, the gross yield of the geothermal resource equals the proceeds of the sale of the geothermal resource.

3. If the transaction involves the indirect sale of the geothermal resource, the gross yield of the geothermal resource is the total revenue received from the sale of any electricity, heat or

other by-product of the geothermal resource that is agreed upon by the parties to the sale, less any processing allowance or transportation allowance. If the selling price includes any costs for processing or transportation, the person extracting the geothermal resource shall report those costs on a form prescribed by the Department. The Department shall consider those costs in determining the gross yield of the geothermal resource.

4. In the case of an indirect sale of a geothermal resource that is used to produce electricity, all energy, capacity and other payments received, if any, must be included in the gross yield of the geothermal resource.

5. If the costs associated with the processing allowance or transportation allowance are included in a bona fide arms-length contract, the costs shall be deemed to be an appropriate deduction from the selling price. Such costs may include the negotiated costs for the operation, maintenance and replacement of the plant which are paid by the operator of the field, reduced by any negotiated costs for the operation, maintenance and replacement of the field which are paid by the operator of the plant. The negotiated costs must be set forth in a written contract or other document specified by the Department and may include, but are not limited to:

(a) A negotiated sharing by percentage of the operating and maintenance costs of the field and the plant; or

(b) A negotiated agreement that the operator of the field will pay for necessary improvement to the plant.

6. If the costs associated with the processing allowance or transportation allowance are not included in a bona fide arms-length contract, the Department must consider the following:

(a) The annual total cost of operating and maintaining the plant, transmission line and any other facility or equipment used to transport the geothermal product after all mining functions

and processing are complete, including, but not limited to, any reasonable and prudent costs incurred for direct wages, benefits, workers' compensation, supplies, materials and charges for overhead, general liability insurance incurred because of the plant and transmission line and costs for obtaining and maintaining any permit for a site, permit relating to air quality or any other permit or license required to operate the plant or transmission line. The transportation allowance for a transmission line is allowed only in direct proportion to the relationship of the field operator's investment to the total cost of the transmission line.

(b) ~~{Except as otherwise provided in NAC 362.100 to 362.160, inclusive, the}~~ *The* depreciation of the capital investment in the plant and transmission line using the straight-line method over the useful life of the asset established in accordance with the *Personal Property Manual*.

(c) Any charges for wheeling electricity or for loss of power in the transmission line.

(d) Amortization of each long-term contract to purchase power using the straight-line method over the stated life of the contract. Any amount amortized pursuant to this paragraph must not exceed 60 percent of the original book value of the plant and transmission line.

(e) An allowance for return on the investment in the plant and transmission line, calculated by multiplying the cost of acquiring the plant and transmission line, as recorded in the books and records of the operator, by the overall rate of return on capital. The overall rate of return on capital must be based on the appropriate electric industry cost of capital study conducted by the Department pursuant to NAC 361.408 and 361.425.

7. For the purpose of paragraph (e) of subsection 6:

(a) If an agreement for the purchase of power is in effect, the Department may grant an allowance for a return on the investment for a period that is equal to the remaining term of the

agreement or 15 years, whichever is less. If such an agreement is not in effect, the Department may grant the allowance for a period that is equal to the remaining useful life of the plant and transmission line or 15 years, whichever is less.

(b) If the plant or transmission line is repowered or a reinvestment in the plant or transmission line occurs, the taxpayer may apply to the Department for an extension of the allowance specified in paragraph (a). The Department may grant an extension pursuant to this paragraph for a period that is equal to the remaining life of the assets purchased for the repowering or reinvestment or 15 years, whichever is less. The remaining life of those assets must reasonably reflect the useful life of those assets established in accordance with the *Personal Property Manual*.

(c) To calculate the allowance specified in paragraph (a), the Department may require the taxpayer to submit any additional information specified by the Department, including, without limitation:

(1) A statement setting forth the amount of any recapitalization or repowering of the plant or transmission line;

(2) A statement setting forth the established life of the assets purchased; or

(3) An audit of the books and records of the taxpayer.

(d) If the Department grants an extension pursuant to paragraph (b), the amount of the return on the investment must not exceed the amount of the recapitalization or repowering of the plant or transmission line.

8. As used in this section, “*Personal Property Manual*” has the meaning ascribed to it in NAC 361.1361.

**Sec. 3.** NAC 362.100, 362.110, 362.120, 362.130, 362.140, 362.150 and 362.160 are hereby repealed.

**Sec. 4.** Sections 1, 2 and 3 of this regulation do not apply to or affect:

1. Any depreciation of assets approved by the Nevada Tax Commission before December 23, 2013; or

2. Any powers or duties of the Department of Taxation or any mining operator relating to any depreciation of assets approved by the Nevada Tax Commission before December 23, 2013.

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**TEXT OF REPEALED SECTIONS**

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**NAC 362.100 Eligibility of mining operator for accelerated depreciation. (NRS 360.090, 362.120)**

1. A mining operator may petition the Nevada Tax Commission for permission to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment in the accelerated manner prescribed in NAC 362.140 if the mining operator has:

(a) Complied with all applicable provisions of chapter 519A of NRS and the regulations adopted pursuant thereto;

(b) Agreed in writing to extend the time allowed for the Department to file a certificate of delinquency pursuant to NRS 360.420 to the date on which the Department completes a final audit; and

(c) Given public notice that the mining operation will close within 36 months after the date on which the petition is filed with the Commission.

2. The public notice must set forth one or more reasons for the closure and the date on which the closure is expected. The notice must be delivered personally or sent by certified mail to the county commissioners of the county in which the mining operation is located and to the Budget Division of the Department of Administration and:

(a) If the mining company is publicly held, appear in the annual reports which the company is required to provide to the Securities and Exchange Commission and which it provides to its stockholders; or

(b) If the mining company is not publicly held, be sent to all creditors whose money financed the assets for which the company is seeking permission to use the accelerated depreciation method.

**NAC 362.110 Filing of petition and accompanying documents. (NRS 360.090, 362.120)**

A petition to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment in the accelerated manner prescribed in NAC 362.140 must:

1. Be filed with and approved by the Nevada Tax Commission before the date on which the mining operator is required to file the annual statement required by NRS 362.110.

2. Be accompanied by a copy of each public notice which was sent pursuant to NAC 362.100.

3. Be accompanied by a copy of the plan for reclamation filed with the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

4. If the mining operator filed a plan of operation with the Division of Environmental Protection of the State Department of Conservation and Natural Resources, be accompanied by the plan.

5. Be accompanied by:

- (a) A notarized statement which is signed by an officer of the company; or
- (b) A copy of the plan for productive use of the land after the mining has stopped,  
 ↪ setting forth the proposed disposition of the leasehold improvements, buildings, fixed machinery and fixed equipment.

**NAC 362.120 Temporary closure not acceptable justification for allowance of petition. (NRS 360.090, 362.120)** The Nevada Tax Commission will not accept closure of a mining operation because of a temporary change in economic conditions or any other closure of a mining operation which the Commission determines to be temporary as the justification for allowing a petition to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment in the accelerated manner prescribed in NAC 362.140.

**NAC 362.130 Permission to depreciate assets granted to specific company only. (NRS 360.090, 362.120)** Permission to depreciate assets in the accelerated manner prescribed in NAC 362.140 must be granted to a specific mining company and does not follow any transfer of the assets. For the purposes of this section, a subsidiary or affiliate of a mining company is a separate company.

**NAC 362.140 Manner of depreciation. (NRS 360.090, 362.120)**

1. If the Nevada Tax Commission grants a petition, the leasehold improvements, buildings, fixed machinery and fixed equipment must be depreciated at the following rates:

<u>Year</u>	<u>Percentage</u>
1.....	10
2.....	20
3.....	30



2. The amount of the remaining depreciation allowed for the asset, less any salvage value not previously subtracted, must be multiplied annually by the allowed percentage beginning on the date on which the first annual statement required by NRS 362.110 is filed after the date on which the petition is granted. The percentage which must be used for the first year of accelerated depreciation is 10 percent whether or not the remaining useful life of the asset is 36 months. If the mining operator acquires leasehold improvements, buildings, fixed machinery or fixed equipment after the petition is granted, such assets must be depreciated in the same manner as the existing assets using 10 percent for the first year of depreciation.

3. The salvage value of an asset must be calculated on the basis of the projected value of the asset at the time of the anticipated disposition. If excess depreciation is taken because a mining operator underestimated the salvage value of an asset, penalties and interest pursuant to NRS 360.417 must be applied to any underpayment of tax resulting therefrom.

4. The mining operator shall credit the decrease in tax liability resulting from the accelerated depreciation against the estimates or final taxes due pursuant to NRS 362.115.

**NAC 362.150 Annual audits by Department; requirement of surety. (NRS 360.090, 362.120)**

1. The Department may conduct annual audits of any mining operation that is allowed to depreciate its assets in the accelerated manner prescribed in NAC 362.140.

2. If the Department determines that it is possible that the mining operator will continue to process, sell or stockpile the mined product for longer than the agreed time, the Department shall require the mining operator to file a surety with the Department. The surety must be:

(a) Executed by the mining operator as principal and by a corporation qualified under the laws of this State as surety;

(b) Payable to the State of Nevada;

(c) A bond, letter of credit or any other form of security authorized by NRS 100.065; and

(d) Conditioned upon the punctual payment of all taxes on the net proceeds of mines, including all penalties and interest.

3. The total amount of the surety must not be less than the amount the Department determines to be the potential liability for taxes, penalties and interest at the time that the mining operation could continue beyond the date of closure specified in the notice required by NAC 362.100. The mining operator shall file the surety within 30 days after the Department notifies him or her of such a duty.

**NAC 362.160 Duties of operator who fails to cease or reopens operation. (NRS 360.090, 362.120)** If a mining operator who has been allowed to depreciate assets using the accelerated method fails to cease operations on the date of closure specified in the notice required by NAC 362.100 or at any time reopens the mining operation, the mining operator shall:

1. Notify the Department in writing within 30 days after the date agreed upon or the reopening of operations;

2. Pay to the Department within 30 days after demand the difference between the net proceeds taxes using the straight-line method of depreciation over a 20-year period and the amount paid using the accelerated method for any year in which the accelerated method was used; and

3. Pay to the Department within 30 days after demand penalties and interest pursuant to NRS 360.417.

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

**LCB FILE R172-12**

**Repeal of NAC 362.100 through 362.160, Accelerated Depreciation**

The following statement is submitted for amendments, additions and deletions, to Nevada Administrative Code (NAC) 361 adopted by the Nevada Tax Commission.

**1. The Need for and Purpose of the Permanent Regulation.**

The purpose of the permanent regulation, LCB File No. R172-12, is to repeal the provisions regarding the accelerated depreciation of certain capitalized costs to determine the net proceeds of minerals upon permanent closure of a mine. The regulations proposed for repeal have to do with allowing accelerated depreciation for certain mine property for purposes of calculating the net proceeds of minerals tax. If a mine has complied with all the applicable provisions of NRS Chapter 519A, Reclamation of Land Subject to Mining Operations, agrees to extend the time allowed for the Department to file a certificate of delinquency pursuant to NRS 360.420 to the date of final audit, and gives public notice that the mining operation will close within 36 months after the date on which the petition is filed with the Commission, then the mining operator may petition the Nevada Tax Commission for permission to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment at the accelerated rate provided in NAC 362.140.

The regulations were adopted in 1991. In the twenty-two years since then, 72 mines were shutdown<sup>1</sup> but only one mine applied for accelerated depreciation. Ultimately the mine that applied did not receive accelerated depreciation because, upon audit, the Department found the mine had not actually closed. The finding was upheld by the Nevada Tax Commission after 10 years of litigation.

Repeal of the regulations will remove regulations which are not used or useful in determining the net proceeds of minerals tax.

**2. 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.**

The Department of Taxation (Department), as staff to the Nevada Tax Commission (NTC), solicited comment from the public by sending notice of workshops and hearings by electronic or regular mail as follows:

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<sup>1</sup> Based on data from the Nevada Division of Minerals

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>	<u>Number Notified</u>	<u>Representing Businesses</u>
11-4-13	Workshop	11-22-13	400	102
11-5-13	Hearing	12-09-13	400	102

The mailing list included the interested parties list maintained by the Department, as well as officials of local jurisdictions subject to these regulations.

Comments were received from Department staff during the workshop and adoption hearing.

The comments addressed the repeal of NAC 362.100 regarding the eligibility of a mining operator for accelerated depreciation; NAC 362.110 providing for the filing of a petition and associated documents; NAC 362.120 providing that the Nevada Tax Commission will not accept temporary closure of a mine as a justification for accelerated depreciation; NAC 362.130 limiting accelerated depreciation to a specific mining company and does not follow any transfer of assets; NAC 362.140 providing the manner of depreciation; NAC 362.150 providing for annual audits of companies that have been granted accelerated depreciation; and NAC 362.160 enumerating the duties of an operator who fails to cease or reopens operations after accelerated depreciation has been granted.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Nevada Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Nevada Department of Taxation at [ware@tax.state.nv.us](mailto:ware@tax.state.nv.us).

The Legislative Counsel Bureau (LCB) completed its review of submitted revisions on November 8, 2013. NTC adopted the regulation at the hearing held on December 9, 2013.

**3. The number of persons who:**

**(a) Attended and testified at each workshop:**

<u>Date of Workshop</u>	<u>Attended</u>	<u>Testified</u>
11-22-13	4	1

**(b) Attended and testified at each hearing:**

<u>Date of Hearing</u>	<u>Committee/Public Attended</u>	<u>Testified</u>
12-9-13	71	1

**(c) Submitted to the agency written comments:**

<u>Date of Workshop / Hearing</u>	<u>Number Received</u>
12-9-13 Hearing	1

Name	Telephone	Business Address	Business Telephone	Electronic Mail Address	Representing
Terry Rubald	775-684-2095	1550 College Parkway Carson City, NV 89701	775-684-2095	trubald@tax.state.nv.us	Dept of Taxation
Tim Crowley	775-829-2121	201 W. Liberty St., Ste. 300 Reno, NV 89501	775-829-2121	tim@nevadamining.org	Nevada Mining Association

**4. 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 local governments, businesses and persons, by notices posted at the Nevada State Library; various Department of Taxation locations throughout the state; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email to county officials and other interested parties lists maintained by the Department. Approximately 25.5% of the approximately 400 direct notices were sent to individuals or associations representing business.

Department staff commented on some or all of the proposed language changes during the workshop process and during the Adoption Hearing of the Nevada Tax Commission. A representative of the Nevada Mining Association (NMA) responded to inquiry from Department staff that the tax committee of the NMA had considered the regulation repeal but had no comment. No other comments from small businesses were made.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Nevada Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Nevada Department of Taxation at [ware@tax.state.nv.us](mailto:ware@tax.state.nv.us).

**5. 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 with no changes, as none were made by the general public or the Nevada Mining Association. NTC adopted the permanent regulation as written; and believed no changes other than those made were necessary.

**6. 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**

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

**Beneficial Effects**

Repeal of the regulation will remove regulations which are not used or useful in determining depreciation of real property. Depreciation is otherwise calculated pursuant to NAC 362.040 at a straight-line rate, and in particular includes subparagraph 6, which allows all remaining allowable depreciation if any property is disposed of before the end of the depreciation period. The Department assumes that in a mine closure, the assets are sold or dismantled, thus NAC 362.040(6) would allow all remaining depreciation.

With regard to why the regulations are not used or useful, at workshops held on May 1, 2000 and July 7, 2000, mining industry participants reported that the regulations were not workable as written, particularly the public notice section in NAC 362.100, which was described as “antiquated.” Under NAC 362.100, application of accelerated depreciation is dependent upon permanent closure of the mine. In order to qualify, one of the conditions requires public notice that the mining operation will close within 36 months after the date on which the petition is filed with the Commission. Public notice includes noticing county commissioners, notice of closure in SEC shareholder reports, or, if not publicly held, notice to all creditors.

The comments from industry at the workshops in 2000 were that public notice causes anxiety to the local community. In addition, it is difficult to predict the date of mine closure, the end of life of a mine may or may not actually happen as predicted, and there is no benefit gained in making a public announcement, years in advance of actual closure.

**Adverse Effects**

Repeal of the regulation would remove the ability to accelerate depreciation for a mine that will permanently close. The value of an allowable deduction to a taxpayer is the reduction to the gross yield, resulting in lowering the taxable net proceeds of the minerals. Accelerated depreciation allows the deduction of depreciation earlier in the life of a mine prior to closure.

**Direct Effect**

Repeal of the regulation will not result in any immediate increase in taxable net proceeds to taxpayers. Similarly, there will be no immediate effect on state or local government revenues. Two mines permanently closed between 2008 and 2012 (the last was a gypsum mine in Clark County). There was no production and no taxes were due, therefore accelerated depreciation would not have changed the net proceeds result. Mine operators considering permanent closure may still rely on NAC 362.040(6) to capture any remaining depreciation.

**Indirect Effect**

The indirect effect of repeal of the regulation will mean taxpayers will continue to rely on the current method of straight-line depreciation as an allowable deduction. Since the regulation has not been used or useful, there is little to no change in the amounts of deductions claimed.

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

The Department does not anticipate any cost to the agency for enforcement.

**8. 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 other state or government agency regulations that the proposed amendments duplicate.

**9. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

The Nevada Tax Commission is not aware of any provision in this regulation which is also governed by federal regulation.

**10. 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 regulation does not provide for a new fee, and does not increase an existing fee.

**11. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restricted the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

The Department determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination the Department requested comments from mine companies and from the Nevada Mining Association. There was either no response or no opposition.