

PROPOSED REGULATION OF THE NEVADA TAX COMMISSION

LCB File No. R095-14

Abatement / Deferral regulation changes pursuant to AB1 and NRS 360.750

NAC 360.468 ~~“Commission”~~ **“Office” defined.** (NRS 360.750) ~~“Commission”~~ **“Office”** means the ~~{Commission on Economic Development}~~ **Governor’s Office of Economic Development (GOED).**

NAC 360.470 “Partial abatement” defined. (NRS 360.750) “Partial abatement” means the reduction of a portion of the taxes imposed pursuant to chapter 361, ~~{364A}~~ **363B** or 374 of NRS, or any combination thereof, which is authorized by NRS 360.750.

NAC 360.472 Application: Date of submittal; consideration by *The Office* {Commission}; certificate of eligibility upon approval. (NRS 360.750, 361.0687, ~~363B.110 {364A.170}~~ 374.357, 701A.210)

1. To apply for a partial abatement, a person must submit an application to the *Office* ~~{the Commission}~~ on a form prescribed by the *Office* ~~{Commission}~~. ~~{within the period prescribed in subsection 2-}~~

~~2. If the application is for a partial abatement of the taxes imposed pursuant to chapter 361 or 364A of NRS, the application must be submitted not earlier than 18 months before the business is located or expanded in this State. If the application is for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the application must be submitted not later than 60 days after the date of acquisition of the eligible machinery or equipment.~~

~~3-}~~ Except as otherwise provided in subsection ~~2 {4}~~, the *Office* ~~{Commission}~~ will consider an application submitted pursuant to subsection 1 if the application is received:

(a) At least ~~{15} 45 {working}~~ days before a regularly scheduled meeting of the *Office* ~~{Commission}~~, at that meeting; or

(b) Less than ~~{15} 45 {working}~~ days before a regularly scheduled meeting of the *Office* ~~{Commission}~~, at the next regularly scheduled meeting immediately following that meeting.

~~{4} 2.~~ If the *Office* ~~{Commission}~~ determines that an application submitted pursuant to subsection 1 requires special or additional review and consideration by the *Office*, the *Office* ~~{Commission}~~ may postpone consideration of the application until the next regularly scheduled meeting of the *Office* ~~{Commission}~~.

~~5. 3.~~ If the *Office* ~~{Commission}~~ approves an application for a partial abatement, the *Office* ~~{Commission}~~ will forward to the Department, with the certificate of eligibility required pursuant to subsection ~~{5} 4~~ of NRS 360.750, any materials submitted to the *Office* ~~{the Commission}~~ in support of the application submitted pursuant to subsection 1.

NAC 360.474 Factors considered by the *Office*. (NRS 360.750, 361.0687, ~~364A.170}~~ **363A.110**, 374.357, 701A.210)

1. The *Office* ~~{Commission}~~ will consider an application for a partial abatement if the goals of the applicant are consistent with the goals of the *Office* ~~{Commission}~~ concerning industrial

development and diversification. The goals of the *Office* ~~{Commission}~~ include, without limitation:

- (a) Diversification from the industries of gaming and hospitality;
- (b) The attraction of basic industries to this State, including, without limitation, manufacturing, warehousing and distribution;
- (c) The attraction to this State of business facilities and services, including, without limitation, corporate headquarters, facilities for research and development, and facilities for services such as technical assistance with products of the business or credit services; and
- (d) The expansion of existing businesses and industries that are consistent with the goals described in paragraphs (a), (b) and (c).

2. Before the *Office* ~~{Commission}~~ approves an application for a partial abatement, the *Office* ~~{Commission}~~ will consider whether the applicant:

- (a) Complies with the requirements set forth in NRS 360.750;
- (b) Commits to continue in operation in this State *at the location of the business in that county or city* for:

- (1) At least 5 years *after the effective date of the abatement as shown on the “Tax Abatement and Incentives Agreement”*; or

- (2) The period specified in the agreement executed by the applicant with the *Office* ~~{Commission}~~ pursuant to paragraph (b) of subsection 2 of NRS 360.750,

- whichever is later. ~~{after the date on which the applicant initially pays taxes to the Department or the county treasurer, as applicable, after the partial abatement has been approved by the Commission}~~;

- (c) Offers primary jobs; and

- (d) If the application concerns a partial abatement of the taxes imposed pursuant to chapter ~~{364A}~~ *363B* or 374 of NRS, registers with the Department on a form provided by the Department.

3. As used in this section, “primary job” means a position of employment offered by an applicant for a partial abatement, the compensation for which is obtained from revenue that is generated outside the economic region in which the business is located.

NAC 360.4745 Business tax: Applicability of partial abatement. (NRS 360.750, ~~{364A.170}~~) A partial abatement of the taxes imposed pursuant to chapter 363B ~~{364A}~~ of NRS that is approved by the *Office* ~~{Commission}~~ for an expanded business:

- 1. Applies only to the taxes due for the additional employees employed by the business as a result of the expansion of the business.
- 2. Does not apply to the taxes due for the employees that were employed by the business before the expansion.

NAC 360.475 Business tax: Date of eligibility; determination of amount of capital investment required; filing of form of compliance with proof of capital investment. (NRS 360.750, 364A.170)

- 1. For the purposes of NRS 360.225, ~~{to determine eligibility for a partial abatement of the taxes imposed pursuant to chapter 364A of NRS, a proposed or expanded business which qualifies as an employer pursuant to NRS 612.055 shall be deemed by the Department to have begun operations in this State}~~:

~~(a) If the business is a proposed business, on the date on which the business first pays wages to an employee of the business who performs services for the business in this State.~~

~~(b) If the business is an expanded business, on the date on which the business first pays wages to an employee of the business who was not employed by the business before the expansion.~~

~~2.] To determine the amount of capital investment required pursuant to paragraph (d), (e) or (f) of subsection 2 of NRS 360.750 for a partial abatement of the taxes imposed pursuant to chapter ~~364A] 363B~~ of NRS:~~

(a) A capital investment shall be deemed to be any expenditure for “Eligible machinery or equipment” Eligible machinery or equipment is machinery or equipment for which a deduction is authorized pursuant to 26 *U.S.C. § 179*. *The term does not include:*

(1) Buildings or the structural components of buildings;

(2) Equipment used by a public utility;

(3) Equipment used for medical treatment;

(4) Machinery or equipment used in mining; or

(5) Machinery or equipment used in gaming, ~~[an asset that qualifies as “section 1245 property,” as defined in 26 U.S.C. § 1245, if the asset will be used by the proposed business to establish its operations in this State or by the expanded business to expand its operations in this State.]~~ and

(b) The amount paid for such *machinery or equipment* ~~[an asset]~~, including any capitalized interest, shall be deemed to be the amount of the capital investment for that *machinery or equipment* ~~[asset]~~. Any finance charge, tax or interest paid for the *machinery or equipment* ~~[asset]~~ must not be included in the determination of the amount of the capital investment for that *machinery or equipment* ~~[asset]~~.

2. The eligible machinery and equipment must be retained at the location of the business in that county or city until at least the date which is 5 years after the effective date of the abatement as shown on the “Tax Abatement and Incentives Agreement”.

3. A business for which the *Office* ~~[Commission]~~ has approved a partial abatement of the taxes imposed pursuant to chapter *363B* ~~364A]~~ of NRS shall, not later than 30 days after *the fourth calendar quarter following the calendar quarter in which the abatement becomes effective*, ~~[the end of the first fourth quarter in which the business has been in operation after the approval of the partial abatement.]~~ file with the Department on a form prescribed by the Department, a statement that the business has complied with the requirements of NRS 360.750. ~~[The form must be accompanied by proof that the business has made the capital investment required by the Commission pursuant to NRS 360.750.]~~

NAC 360.476 Local school support tax: Date of eligibility of machinery or equipment.

(NRS 360.750, 374.357) If an application is approved by the *Office* ~~[Commission]~~ for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the period of abatement begins *on the effective date as indicated on the Tax Abatement and Incentive Agreement. The business must make the capital investment as indicated on the Tax Abatement and Incentive Agreement, attachment C not later than 2 years after the effective date of the abatement as shown on the “Tax Abatement and Incentives Agreement”.* ~~[on the date on which the applicant takes possession of the first delivery of eligible machinery or equipment at the location designated in the certificate of eligibility issued by the Commission. Upon taking possession of such eligible machinery or equipment, the applicant shall immediately notify the Commission and the Nevada Tax Commission.]~~ *Upon request from the Department of Taxation the business shall provide the Department all necessary records for verification of capital expenditures.*

NAC 360.4765 Minimum period of employment of required number of employees. (NRS 360.750, 364A.170, 374.357) If the *Office* ~~{Commission}~~ approves an application for a partial abatement of the taxes imposed pursuant to chapter 363B ~~{364A}~~ or 374 of NRS, the applicant must employ the number of employees required by the *Tax Abatement and Incentive Agreement by the fourth calendar quarter following the calendar quarter after the effective date of the abatement as shown on the "Tax Abatement and Incentives Agreement"* ~~{Commission for approval of the application by the last day of the first fourth quarter that the applicant has been in operation after the partial abatement has been approved by the Commission}~~ and must continue to employ at least that number of employees for:

1. At least 5 years *after the date which the abatement becomes effective*; or
2. The *another* period specified in the *Tax Abatement and Incentive Agreement* ~~{executed by the applicant with the Commission pursuant to paragraph (b) of subsection 2 of NRS 360.750, whichever is later, after the last day of that fourth quarter.}~~

NAC 360.4775 Determination of tax owed upon failure to continue to meet requirements; appeal. (NRS 360.750, ~~{364A.170}~~ **363B.110**, 374.357)

1. If the Department finds that a business for which the *Office* ~~{Commission}~~ has approved an application for a partial abatement of the taxes imposed pursuant to chapter ~~{364A}~~ **363B** or 374 of NRS has failed to continue to meet the requirements as set forth in *the Tax Abatement and Incentive Agreement* ~~{the for the partial abatement imposed by the Commission}~~ pursuant to NRS 360.750, the Department shall determine the amount of tax owed to the Department in the manner prescribed in NRS 360.300 to 360.400, inclusive.
2. A business against whom the Department has made such a determination may, in the manner prescribed in NRS 360.300 to 360.400, inclusive, file an appeal with the *Department of Taxation* ~~{Nevada Tax Commission}~~ for a determination whether the business has substantially complied with the requirements of ~~{and for the partial abatement approved by the Commission pursuant to}~~ NRS 360.750.

Regulations to be repealed

NAC 360.477 Refund upon approval of application. (NRS 360.750, 364A.170, 374.357)

1. If the Commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 364A of NRS, the applicant is eligible for a refund of any taxes imposed pursuant to chapter 364A of NRS which were paid previously by the applicant and which are subject to the abatement.
2. If the Commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the applicant is eligible for a refund of any taxes imposed pursuant to chapter 374 of NRS which were paid previously by the applicant and which are subject to the abatement, if the Department determines pursuant to NAC 360.4755 that the machinery or equipment qualifies as eligible machinery or equipment and:

- (a) If the machinery or equipment was acquired outside this State from a retailer that is not registered with the Nevada Tax Commission, the application for the partial abatement was made:
- (1) Before the acquisition of the machinery or equipment; or
 - (2) After the acquisition of the machinery or equipment and within 60 days after the date on which the taxes on the acquisition imposed pursuant to chapter 374 of NRS were due; or
- (b) If the machinery or equipment was acquired from a retailer that is registered with the Nevada Tax Commission, the application for the partial abatement was made within 60 days after the payment of the taxes on the acquisition imposed pursuant to chapter 374 of NRS.