

Chapter 361 of NAC

**PROPOSED TEMPORARY REGULATION OF
THE NEVADA TAX COMMISSION**

LCB File No. T009-16

Draft for Adoption Hearing December 5, 2016

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

AUTHORITY: §§1-, NRS 360.090, 360.250, 361.227, and 361.260;

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 34, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 34, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 22, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *1. “Aircraft” means any contrivance used or designed for the navigation of or for flight in the air, other than a parachute or similar emergency safety device. Aircraft includes, but is not limited to:*

(a) General aircraft;

(b) Commercial aircraft;

(c) Unmanned aircraft systems, and small unmanned aircraft systems, commonly known as drones;

(d) Kit aircraft;

(e) Light-sport aircraft;

(f) Ultra-light aircraft;

(g) Hang gliders;

(h) Hot air balloons; and

(i) Fixed-wing aircraft with a weight of less than 12,500 pounds used by an unscheduled air transport company that would otherwise be subject to valuation by the Nevada Tax Commission, if the company elects, in the form and manner prescribed by the Department, to have the property of the company assessed by a county assessor pursuant to NRS 361.320(10).

2. "Aircraft" does not include any of the following:

(a) Rockets or missiles;

(b) Any property of an interstate or inter-county nature used directly in the operation of an scheduled or unscheduled air transport company subject to valuation by the Nevada Tax Commission pursuant to NRS 361.320(1), except fixed-wing aircraft meeting the conditions of NRS 361.320(10).

Sec. 4. "Allocation" means the process of assigning a portion of a property value having taxable situs in multiple states to an individual state or county using a formula.

Sec. 5. "Apportionment" means the process of assigning or spreading a portion of the taxable property value that is allocated to an individual state or county to that state's or county's various tax levying districts.

Sec. 6. 1. "Commercial aircraft" means civilian aircraft operated for compensation or hire and used in the carriage of persons or property.

(a) The term includes aircraft used in an on-demand, scheduled, or supplemental operation, except aircraft operated by a scheduled or unscheduled air transport company subject to valuation by the Nevada Tax Commission.

(b) Where it is doubtful that an operation is for “compensation or hire”, the test applied is whether the carriage by air is merely incidental to the operator’s other business or is, in itself, a major enterprise for profit.

Sec. 7. *“Domicile” means:*

(a) The permanent, principal home to which a person returns or intends to return after an absence; or

(b) The principle place where a business has its headquarters or principle place of business located.

Sec. 8. *“FAA” means the Federal Aviation Administration, a regulatory agency within the U.S. Department of Transportation responsible for ensuring the safety of civil aviation.*

Sec. 9. *“Foreign air carrier” means any person other than a citizen of the United States, who undertakes directly, by lease or other arrangement, to engage in air transportation.*

Sec. 10. *“General aircraft” means civilian aircraft operated for purposes other than commercial passenger or cargo transport, registered with, and having an airworthiness certificate issued from, the FAA.*

Sec. 11. *“Habitually situated” means the location where an aircraft spends the most ground time.*

Sec. 12. *“Jurisdiction” means the taxing entity, state, or nation that has jurisdiction to tax a property because of the property’s location or use, or because of the owner’s domicile or principal place of business.*

Sec. 13. *1. “Kit aircraft” means an aircraft:*

(a) Assembled by a person from a kit manufactured by the holder of an FAA production certificate for that kit, without the supervision and quality control of the production certificate holder; and

(b) Issued a special airworthiness certificate by the FAA.

Sec. 14. *“Light-sport aircraft” has the meaning ascribed to it in 14 CFR §1.1 .*

Sec. 15. *“On-demand operation” has the meaning ascribed to it in 14 CFR §110.2 .*

Sec. 16. *1. “Scheduled and unscheduled air transport company” means a commercial operator:*

(a) Engaged in the common carriage of persons or property for compensation or hire;

(b) Who holds a certificate from the FAA authorizing operations under parts 121, 125 or 135 of 14 CFR Chapter 1, Subchapter G;

(c) Who uses property of an interstate or inter-county nature directly in the operations of the company; and

(d) Whose property is subject to valuation by the Nevada Tax Commission pursuant to NRS 361.320(1).

Sec. 17. *“Scheduled operation” has the meaning ascribed to it in 14 CFR §110.2 .*

Sec. 18. *“Service member” means a member of the uniformed services, as that term is defined in 10 U.S.C. §101(a)(5), as used in 50 U.S.C. App. §511(1) of the Servicemembers Civil Relief Act.*

Sec. 19. *“Small unmanned aircraft” means an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.*

Sec. 20. *“Supplemental operation” has the meaning ascribed to it in 14 CFR §110.2 .*

Sec. 21. *1. “Taxable situs” means the location or locations where an aircraft has received opportunities, benefits and protection from a jurisdiction sufficient to confer the power to tax at that location or locations.*

Sec. 22. *“Unmanned aircraft system (UAS)” means an unmanned aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) that are required for the safe and efficient operation of the unmanned aircraft in the national airspace system.*

Sec. 23. *1. A person claiming an aircraft is exempt from taxation as personal property held for sale by a merchant or manufacturer pursuant to NRS 361.068(1)(a) or (b) in the ordinary course of business, has the burden of establishing to the satisfaction of the county assessor that the aircraft qualifies for the claimed exemption. The initial claim for exemption must be accompanied by the following documents as requested by the county assessor:*

(a) FAA dealer’s license;

(b) Seller’s permit;

(c) Local business license;

(d) Proof of location on an airport or airfield;

(e) Flight log; or

(f) Listing or consignment agreements.

Sec. 24. *1. An aircraft owned by a service member or the spouse of a service member shall not be deemed to be located or present in, or to have a taxable situs in, the tax jurisdiction in which the service member is serving in compliance with military order, unless the jurisdiction is the member’s domicile or residence or if the aircraft is used in a trade or business, pursuant to 50 U.S.C. App. §571(d)(1-3).*

2. The county assessor may request documentation from the service member confirming current active duty status.

Sec. 25. An aircraft owned by a foreign air carrier, based and registered abroad and used exclusively in international commerce is deemed to not have acquired taxable situs in Nevada.

Sec. 26. 1. The written statement required by NRS 361.265 setting forth information about the aircraft that is necessary to ascertain the taxable value of the aircraft includes, but is not limited to, the serial number, the make, model, year of manufacture of the aircraft, and engine and maintenance information, including the total hours logged on the aircraft following the last major overhaul of the engine of the aircraft.

Sec. 27. Aircraft shall be valued and assessed pursuant to the requirements of NAC 361.1345 through NAC 361.139 prior to any allocation or apportionment of taxable value.

Sec. 28. 1. Taxable situs of an aircraft is established in a jurisdiction based on the quantity, nature, and intent of its physical presence within the jurisdiction. Physical presence must be of a permanent nature, sufficient to afford the opportunities, benefits, and protection of the taxing jurisdiction to the aircraft. The quantum of contact of the aircraft with a jurisdiction sufficient to establish taxable situs is a question of fact based on any of the following measures, without limitation:

(a) The aircraft is used habitually in the jurisdiction, whether on a regular or irregular basis;

(b) The aircraft is habitually kept, maintained, and hangared at the location when not in use; or

(c) Property taxes have been paid to the jurisdiction.

Sec. 29. *1. If an aircraft has acquired taxable situs in Nevada, it must be assessed by the county assessor of the jurisdiction in which it is habitually situated when not in flight. For example, if tax situs is acquired in two or more Nevada counties, 100% of the taxable value allocated to Nevada is apportioned to the Nevada county in which the aircraft is habitually situated.*

2. The taxable value of an aircraft apportioned to the county must be assessed for the full fiscal year and may not be prorated if the aircraft is removed from the county prior to the end of the fiscal year.

Sec. 30. *1. If an aircraft has acquired taxable situs in Nevada and outside Nevada, the property owner may claim the taxable value of an aircraft is subject to allocation. The property owner has the burden of proving taxable situs outside Nevada has been acquired. The burden is met by providing sufficient information to satisfy the requirements of Section 28. Such information includes, without limitation:*

(a) Records kept in the normal course of business, such as mileage, flight, or maintenance logs and hangar or tie-down receipts that indicate where the aircraft has traveled, how long it was located at each destination, and the purpose of its location at each destination;

(b) Actual tax bills or notices of appraisal or assessment from another jurisdiction; or

(c) Reports filed with state or national agencies that indicate where the aircraft has traveled, how long it was located at destination, and the purpose of its location at each destination.

2. The county assessor may also request documentation supporting the domicile of the aircraft owner if it affects the nature and intent of the physical presence of the aircraft. The

documentation may include, without limitation, utility bills, vehicle registration, driver's license, income tax returns, or property ownership records.

Sec. 31. 1. *The county assessor shall determine whether the aircraft has acquired taxable situs in this state and in another jurisdiction outside Nevada from the evidence supplied by the property owner. If the county assessor determines that the aircraft has acquired taxable situs in multiple locations, he or she shall allocate the portion of the aircraft's taxable value that fairly reflects its use in this state.*

2. The calculation for the allocation of taxable value to the county where the aircraft is habitually situated must be made as follows:

(a) Determine the number of overnights the aircraft spent in Nevada divided by the total number of days in the prior fiscal year beginning on July 1 and ending on June 30.

(b) Multiply the total taxable value of the aircraft by the percentage indicated by the ratio determined in subsection 2(a). The resulting value is the amount of taxable value allocated to the county where the aircraft is habitually situated.

Sec. 32. *An aircraft must remain listed on a county's assessment roll until the taxpayer provides written notice and documentation to the assessor that the aircraft no longer has a taxable situs in the county.*

Sec. 33. 1. *A commercial or general aircraft which is titled or registered to fractional owners must be assessed as a single taxable unit. The fractional owners shall be treated as tenants in common for purposes of levying the taxes due.*

2. In the event the fractionally-owned aircraft is part of a fleet operated by a central manager that may be interstate or inter-county in nature, the county assessor shall consult with the Department of Taxation to determine responsibility for assessment.

Sec. 34. *For purposes of application of NRS 361.4722, 361.4723, or 361.4724, property which is not eligible for abatement for the current year includes that portion of the total taxable value for which there was no allocation or apportionment within Nevada for the immediately preceding year*