

**PROPOSED REGULATION OF
THE NEVADA TAX COMMISSION**

LCB File No. R143-18

July 25, 2018

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

AUTHORITY: §1, NRS 360.090; §2, NRS 360.090, 360.200 and 360.250.

A REGULATION relating to taxation; establishing the standard to be used to determine whether an overpayment of certain taxes was made intentionally or by reason of carelessness such that the taxpayer is not entitled to be paid interest on a refund of the overpayment; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires interest to be paid to a taxpayer who receives and refund of an overpayment of certain taxes unless the Department of Taxation determines that the overpayment was made intentionally or by reason of carelessness. (NRS 360.2935, 360.2937, 363A.170, 363B.160, 363C.620, 368A.270, 372.665, 372A.320, 372B.200, 374.670) Existing law also requires interest to be paid to a taxpayer who receives a refund of an overpayment of property taxes unless the county treasurer of the county determines that the overpayment was made intentionally or by reason of carelessness. (NRS 361.475, 361.486) This regulation establishes the standards to be used by the Department or a county treasurer in determining whether an overpayment of certain taxes was made intentionally or by reason of carelessness.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto a new section to read as follows:

For the purposes of NRS 363A.170, 363B.160, 363C.620, 368A.270, 372.665, 372A.320, 372B.200 and 374.670, an overpayment of a tax imposed by chapter 363A, 363B, 363C, 368A, 372, 372A, 372B or 374 of NRS, as applicable, and administered by the Department was made:

1. Intentionally if the overpayment was made for any reason other than a good-faith belief that the taxpayer owed the tax and paid the amount of tax owed by the taxpayer.

2. By reason of carelessness if the overpayment is the result of the failure of the taxpayer to make reasonable and prudent efforts to avoid the overpayment. Such reasonable and prudent efforts may include, without limitation:

(a) Maintaining accurate and complete books and records;

(b) Correcting errors in the computation of the tax which were identified by an audit conducted before the overpayment;

(c) Investigating the taxability of transactions during an audit when the overpayment was reasonably identifiable;

(d) Ceasing to make overpayments after receiving a refund for a prior overpayment involving the same or similar issues;

(e) Ceasing to make overpayments resulting from repeated transactions or transactions of a similar type when the taxability of the transactions is governed by a regulation or law that is commonly followed in the taxpayer's industry, trade or practice and the transactions are conducted over a period of time of sufficient length that a reasonable person would have discovered and corrected the issue causing the overpayment;

(f) Seeking an advisory opinion or other written advice from the Department concerning an interpretation of law when the taxpayer is unsure of the correct interpretation of the law; and

(g) Seeking advice on complex tax matters from a certified public accountant certified to practice in this State pursuant to chapter 628 of NRS or any other person who is certified or licensed in this State to practice a profession the members of which engage in the provision of advice on tax matters and who has knowledge of, or experience in, tax matters.

Sec. 2. Chapter 361 of NAC is hereby amended by adding thereto a new section to read as follows:

For the purposes of NRS 361.486, an overpayment of a tax imposed by chapter 361 of NRS was made:

1. Intentionally if the overpayment is made for any reason other than a good-faith belief that the amount of tax paid was the amount of tax owed.

2. By reason of carelessness if the overpayment is the result of the failure of the taxpayer to make reasonable and prudent efforts to avoid the overpayment. Such reasonable and prudent efforts may include, without limitation:

(a) Maintaining accurate and complete books and records;

(b) Correcting errors in the computation of the tax which were identified by an audit conducted before the overpayment;

(c) Investigating the taxability of transactions during an audit when the overpayment was reasonably identifiable;

(d) Ceasing to make overpayments after receiving a refund for a prior overpayment involving the same or similar issues;

(e) Ceasing to make overpayments resulting from repeated transactions or transactions of a similar type when the taxability of the transactions is governed by a regulation or law that is commonly followed in the taxpayer's industry, trade or practice and the transactions are conducted over a period of time of sufficient length that a reasonable person would have discovered and corrected the issue causing the overpayment;

(f) Seeking an advisory opinion or other written advice from the appropriate state or local governmental entity concerning an interpretation of law when the taxpayer is unsure of the correct interpretation of the law; and

(g) Seeking advice on complex tax matters from a certified public accountant certified to practice in this State pursuant to chapter 628 of NRS or any other person who is certified or licensed in this State to practice a profession the members of which engage in the provision of advice on tax matters and who has knowledge of, or experience in, tax matters.