

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R001-20

February 4, 2020

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

AUTHORITY: §§1-12 and 15-20, NRS 360.090, 360.250 and 361.260; §13, NRS 360.090, 360.250 and 361.068; §14, NRS 360.090, 360.250 and 361.265; §21, NRS 360.090, 360.250 and 361.4722.

A REGULATION relating to taxation; adopting provisions relating to the assessment of certain aircraft by county assessors; establishing provisions governing the determination of whether certain aircraft have taxable situs in this State; adopting provisions governing the allocation and apportionment of the taxable value of certain aircraft having taxable situs in this State; establishing provisions governing the application of certain partial abatements of taxes to certain aircraft having taxable situs in this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that all property of every kind and nature within this State is subject to property taxes unless specifically exempted. (NRS 361.045) Under existing law, each county assessor of a county is required to ascertain and determine the taxable value of all real and personal property in the county which is subject to taxation and the Nevada Tax Commission is required to establish the valuation of property of an interstate or intercounty nature used directly in the operation of scheduled and unscheduled air transport. (NRS 361.260, 361.320) This regulation adopts provisions governing the assessment of certain types of aircraft by county assessors for the purposes of property taxes.

Sections 3, 4 and 6-11 of this regulation set forth the type of aircraft to which this regulation applies. **Section 12** of this regulation provides that this regulation applies only to aircraft assessed by a county assessor.

Under existing law, business inventories, including, without limitation, property held for sale by a merchant or manufacturer, are exempt from property taxes. (NRS 361.068) **Section 13** of this regulation adopts provisions governing the determination of whether an aircraft qualifies for the exemption from property taxes for business inventories.

Existing law requires certain persons to provide to the county assessor of a county a written statement of all personal property owned, claimed, possessed, controlled or managed by the person in the county. (NRS 361.265) **Section 14** of this regulation requires such a written

statement for an aircraft to include certain information that enables the county assessor to determine the taxable value of the aircraft.

Under the Due Process Clause and the Commerce Clause of the United States Constitution, an aircraft or other movable property is subject to taxation in a state only if the aircraft has sufficient contact with the state such that the aircraft has taxable situs in the state. (*Braniff Airways, Inc. v. Nebraska State Bd. of Equalization & Assessment*, 347 U.S. 590, 600-01 (1954)) In addition, if an aircraft or other movable property has taxable situs in more than one state or country, the taxable value of the aircraft or other property is allocated to apportion to each state or country such value as is not subject to taxation in another state or country. (*Standard Oil Co. v Peck*, 342 U.S. 382, 384-85 (1952)) **Sections 15-20** of this regulation adopt provisions relating to the taxable situs of aircraft and the allocation and apportionment of the taxable value of aircraft. **Section 15** adopts provisions governing the determination of whether an aircraft has sufficient physical presence in this State to cause the aircraft to have taxable situs in this State. **Section 16** provides that certain aircraft owned by a servicemember who is serving in this State pursuant to military orders or his or her spouse do not acquire taxable situs in this State, and **section 17** provides that certain aircraft owned by certain foreign air carriers do not acquire taxable situs in this State. **Section 18** sets forth the manner in which an owner of an aircraft may claim that the taxable value of the aircraft is subject to allocation because the aircraft has taxable situs in this State and another state or country. **Section 19** sets forth the formula for allocating the taxable value of an aircraft with taxable situs in this State and in another state or country. **Section 20** provides that an aircraft having taxable situs in this State and included on the assessment roll of a county must be included on the assessment roll of the county until certain circumstances apply.

Existing law provides a partial abatement of property taxes which has the effect of establishing a cap on increases in property taxes. (NRS 361.4722, 361.4723, 361.4724) **Section 21** of this regulation provides that any increase in the assessed value of an aircraft as a result of an increase in the taxable value of the aircraft because a greater portion of the taxable value of the aircraft is allocated to this State is excluded from the partial abatement of property taxes.

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 21, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 11, 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.*

2. *The term includes, without limitation:*

- (a) General aircraft;*
- (b) Commercial aircraft;*
- (c) Unmanned aircraft systems and small unmanned aircraft systems, which are commonly known as drones, other than a small unmanned aircraft system that qualifies as recreational equipment not subject to taxation pursuant to paragraph (a) of subsection 4 of NRS 361.069;*
- (d) Kit aircraft;*
- (e) Light-sport aircraft;*
- (f) Ultra-light aircraft;*
- (g) Hang gliders; and*
- (h) Hot air balloons.*

3. The term does not include:

- (a) A parachute or other similar emergency safety device; and*
- (b) A rocket or missile.*

Sec. 4. *“Commercial aircraft” means a civilian aircraft operated for compensation or hire and used to transport persons or property including, without limitation, an aircraft used in an on-demand operation, scheduled operation or supplemental operation, as those terms are defined in 14 C.F.R. § 110.2. For the purposes of this section:*

1. An aircraft is not operated for compensation or hire if the use of the aircraft to transport persons or property is merely incidental to the business of the operator of the aircraft.

2. An aircraft is operated for compensation or hire if the use of the aircraft to transport persons or property is a major enterprise for profit.

Sec. 5. *“Domicile” means:*

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

2. The place where a business has its headquarters or principal place of business.

Sec. 6. *“General aircraft” means civilian aircraft that is:*

1. Registered with, and has an airworthiness certificate issued by, the Federal Aviation Administration; and

2. Operated for a purpose other than the commercial transportation of passengers or property.

Sec. 7. *“Kit aircraft” means an aircraft:*

1. Assembled by a person from a kit that is manufactured by a person who holds a production certification issued by the Federal Aviation Administration; and

2. Issued a special airworthiness certificate by the Federal Aviation Administration.

Sec. 8. *“Light-sport aircraft” has the meaning ascribed to it in 14 C.F.R. § 1.1.*

Sec. 9. *“Small unmanned aircraft” means an unmanned aircraft weighing less than 55 pounds on takeoff including all items on board or otherwise attached to the aircraft.*

Sec. 10. *“Taxable situs” means contacts sufficient to confer on this State the power to tax an aircraft under the United States Constitution.*

Sec. 11. *“Unmanned aircraft system” means an unmanned aircraft and its associated elements, including, without limitation, 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. 12. *1. Except as otherwise provided in subsection 2, the provisions of sections 2 to 21, inclusive, of this regulation do not apply to property of an interstate or intercounty nature*

used directly in the operation of a scheduled or unscheduled air transport company that is subject to valuation by the Nevada Tax Commission pursuant to NRS 361.320.

2. The provisions of sections 2 to 21, inclusive, of this regulation apply to a fixed-wing aircraft with a weight of less than 12,500 pounds used by an air transport company to provide transportation services if, pursuant to subsection 10 of NRS 361.320, the air transport company elects to have the property of the company assessed by a county assessor.

3. As used in this section, “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) That holds a certificate from the Federal Aviation Administration authorizing the commercial operator to operate under parts 121, 125 or 135 of title 14 of the Code of Federal Regulations;

(c) That uses property of an interstate or intercounty nature directly in its operations; and

(d) The property of which is subject to valuation by the Nevada Tax Commission pursuant to NRS 361.320.

Sec. 13. *1. A person claiming that an aircraft is personal property held for sale by a merchant or manufacturer and is exempt from taxation pursuant to paragraph (a) or (b) of subsection 1 of NRS 361.068, as applicable, has the burden of establishing to the satisfaction of the county assessor that the aircraft qualifies for the claimed exemption.*

2. A claim that an aircraft is exempt from taxation pursuant to paragraph (a) or (b) of subsection 1 of NRS 361.068 must be accompanied by the following documents as requested by the county assessor:

(a) A valid dealer's license issued by the Federal Aviation Administration to the owner of the aircraft;

(b) A valid seller's permit issued to the owner of aircraft by the Department pursuant to NRS 372.135;

(c) A valid business license issued by a local government in this State;

(d) Evidence of the location of the aircraft on an airport or airfield in this State;

(e) A flight log; or

(f) Listing or consignment agreements relating to the aircraft.

Sec. 14. *The written statement required by NRS 361.265 for an aircraft must include information concerning the aircraft that is sufficient to enable the county assessor to determine the taxable value of the aircraft. Such information may include, without limitation:*

1. The serial number, make, model and year of manufacture of the aircraft; and

2. Information concerning the engine of the aircraft and the maintenance of the aircraft, including, without limitation, the total flight hours logged for the aircraft after the last major overhaul of the engine of the aircraft.

Sec. 15. 1. *Except as otherwise provided in sections 16 and 17 of this regulation, an aircraft has taxable situs in this State if the aircraft has a physical presence in this State that is of a permanent nature sufficient to support a determination that the aircraft has been conferred or afforded opportunities, benefits or protections by this State.*

2. The determination of whether an aircraft has taxable situs in this State is a question of fact. In making such a determination, a county assessor must consider the quantity and nature of the physical presence of the aircraft in this State and the intent of the person owning or operating the aircraft in causing the aircraft to have a physical presence in this State.

3. *The circumstances under which an aircraft has taxable situs in this State, include, without limitation, the following circumstances:*

(a) *The aircraft is used habitually in this State, whether on a regular or irregular basis.*

(b) *The aircraft is habitually kept or maintained in this State or habitually stored in a hangar in this State when not in use.*

(c) *Property taxes have been paid with respect to the aircraft in this State.*

Sec. 16. 1. *Notwithstanding the provisions of section 15 of this regulation, an aircraft owned by a servicemember who is stationed in this State in compliance with military orders or the spouse of such a servicemember shall be deemed not to be located or present, or to have taxable situs, in this State unless the domicile or residence of the servicemember or his or her spouse is in this State or the aircraft is used in a trade or business.*

2. *A county assessor may request that a servicemember or his or her spouse provide documentation sufficient to demonstrate that an aircraft owned by the servicemember or his or her spouse is not subject to property taxes in this State pursuant to subsection 1.*

3. *As used in this section, “servicemember” means a person who is a member of:*

(a) *The active or reserve components of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States who is on active duty; or*

(b) *The Merchant Marine, the Commissioned Corps of the Public Health Service or the Commissioned Corps of the National Oceanic and Atmospheric Administration of the United States.*

Sec. 17. 1. *Notwithstanding the provisions of section 15 of this regulation, an aircraft that is owned by a foreign air carrier, based and registered outside of the United States and*

used exclusively in international commerce shall be deemed not to have taxable situs in this State.

2. As used in this section, “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. 18. *1. The owner of an aircraft with taxable situs in this State may claim that the taxable value of the aircraft is subject to allocation pursuant to subsection 2 of section 19 of this regulation if the aircraft has taxable situs in this State and in another state or country. The owner of the aircraft has the burden of proving that the aircraft has taxable situs in another state or country.*

2. To make a claim pursuant to subsection 1, the owner of the aircraft must submit to the county assessor sufficient information to determine whether the aircraft has taxable situs in this State and in another state or country, including, without limitation:

(a) Records kept in the normal course of business that indicate the locations to which the aircraft has traveled, the length of time the aircraft remained at those locations and the purpose of the travel to those locations, including, without limitation, mileage, flight or maintenance logs or tie-down receipts;

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

(c) Reports filed with state or federal governmental agencies that indicate the locations to which the aircraft has traveled, the length of time the aircraft remained at those locations and the purpose of the travel to those locations.

3. To determine the taxable situs of an aircraft, a county assessor may request documentation indicating the domicile of the owner of the aircraft if such information is

relevant to determining the nature of the physical presence of the aircraft in this State and the intent of the owner in causing the aircraft to have a physical presence in this State. Such documentation may include, without limitation, the owner's:

- (a) Utility bills;*
- (b) Vehicle registration;*
- (c) Driver's license or identification card;*
- (d) Income tax returns; or*
- (e) Records of property ownership.*

Sec. 19. 1. *If an aircraft has taxable situs in this State, the aircraft must be assessed by the county assessor of the county in which the aircraft is present for the majority of the total amount of the aircraft's ground time in this State during the fiscal year for which the aircraft is being assessed.*

2. *If an aircraft has taxable situs in this State and in another state or country, the taxable value of the aircraft must be allocated to this State in an amount that fairly reflects the use of the aircraft in this State. The portion of the taxable value of the aircraft allocated to this State must equal the amount determined by multiplying:*

- (a) The taxable value of the aircraft; and*
- (b) The fraction obtained by dividing the number of overnights spent by the aircraft in this State and the total number of days in the immediately preceding fiscal year.*

3. *Before allocating the taxable value of an aircraft to this State pursuant to subsection 2, the county assessor must determine the taxable value of the aircraft pursuant to NAC 361.1345 to 361.139, inclusive.*

4. The entire amount of the taxable value of an aircraft that is allocated to this State must be apportioned to the county in this State in which the aircraft is present for the majority of total amount of the aircraft's ground time in this State during the fiscal year for which the aircraft is being assessed. The aircraft must be assessed by that county for a full fiscal year and, if the aircraft is removed from that county before the end of a fiscal year, the taxes imposed on that aircraft may not be prorated.

Sec. 20. *An aircraft that has taxable situs in this State and is included on the assessment roll of a county in this State for a fiscal year must be included on the assessment role of that county for subsequent fiscal years unless the taxpayer provides:*

1. Written notice to the county assessor stating that:

(a) The aircraft no longer has taxable situs in this State; or

(b) The aircraft was present in another county for the majority of the total amount of the aircraft's ground time in this State during the preceding fiscal year; and

2. Such documentation as the county assessor deems sufficient to indicate the existence of a circumstance described in paragraph (a) or (b) of subsection 1.

Sec. 21. *For the purposes of carrying out the provisions of NRS 361.4722, any increase in the assessed valuation of an aircraft from the immediately preceding year as a result of an increase in the taxable value of the aircraft allocated to this State pursuant to subsection 2 of section 19 of this regulation must be excluded from any partial abatement provided pursuant to NRS 361.4722.*