

**PROPOSED REGULATION OF THE
DEPARTMENT OF TAXATION**

LCB FILE NO. R130-211

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**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. xxx

[Date]

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

AUTHORITY: §1, NRS 360.090, Assembly Bill (AB) 495 (2021)

A REGULATION relating to taxation; providing for the imposition, administration and payment of an excise tax on the Nevada gross revenue of business entities engaged in the business of extracting gold or silver in this State; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes an annual gold and silver education tax on each business entity engaged in the business of extracting gold or silver in this State whose Nevada gross revenue in a taxable year exceeds \$20,000,000.

This regulation adopts provisions necessary for the administration, calculation and payment of the annual gold and silver education tax.

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

Sec. 2. *As used in sections 2 to 8, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Affiliated mining businesses” means 1. For purposes of the gold and silver education tax, a business entity that has as its primary source of gross revenue gold and silver extracted in this State that is sourced to one or more subsidiary business entities that (i) it owns or controls and (ii) are subject to and pay the gold and silver education tax qualifies as affiliated group. (AB 495, Section 14(1)(e).) Any revenue inuring to the parent business entity from its subsidiary business entities shall be considered pass-through*

revenue and not also subject to the gold and silver education tax. (AB 495, Section 14)

2. A joint venture, and any wholly-owned subsidiaries of that joint venture, shall be considered an affiliated group.

Sec. 4. "Business entity" means each business entity extracting and selling gold or silver, or both.

Sec. 5. "Complimentary basis" means goods or services are provided at no charge, in exchange for points or credits earned pursuant to a program under which points or credits are earned or awarded to the customers of a business entity or in exchange for a coupon, voucher or certificate.

Sec. 6. "Engaged in the business of extracting gold or silver, or both, in this State" means a business entity that is engaged in the business of extracting gold or silver, or both, in this State where gross revenue generated by the business entity from the extraction and sale of gold or silver, that is not pass-through revenue as defined by AB 495.

Sec. 7. "Fiduciary duty" means a duty arising from a relationship governed by the provisions of NRS 162.010 to 162.140, inclusive.

Sec. 8. "Gold" and "silver," respectively, have the meaning defined in AB 495 section 8 and includes tangible property containing XXXX troy ounces of per ton. "Troy ounce" means a weight of gold or silver at 999.9 parts per thousand purity and is equivalent to 31.1035g.

Sec. 9. "Gold and silver education tax means the tax imposed by AB 495 section 25.

Sec. 10. "Gold and Silver Education Tax Return" means the return prescribed by the Department to remit the gold and silver education tax as required in subsections 2 and 3 of Section 25.

Sec 11. *“Intangible investments” includes, without limitation, the intangible investments described in that paragraph and an interest in any entity, including, without limitation, a trust, S corporation, partnership, limited-liability company or other entity in which a person owns an interest, regardless of whether that person controls or participates in the management of the entity in which the person owns an interest.*

Sec. 12. *“Person” has the meaning ascribed in NRS .039 and includes an affiliated group as defined in section 14(2)(a) and (b) of AB 495.*

Sec. 13. *“Products and derivatives of gold and silver” have the meaning...*

Sec. 14. *“Sale of Gold or Silver” has the meaning ascribed in section 8 of AB 495 and includes a sale to any person other than a member of an affiliated group.*

Sec. 15. *“Taxable Year” has the meaning ascribed in section 17 of AB 495.*

Sec. 16. *Each business entity shall report each mine that operates: (i) under a unique mining operation permit issued pursuant to NRS 519A.200 and (ii) files a separate and distinct Net Proceeds of Minerals Tax Return with the Department as a separate and distinct business entity under the gold and silver education tax. (AB 495, Section 4 and AB 495, Section 25.)*

Sec. 17. *For the purpose of determining whether a business entity is engaging in business in this State as in NAC 210(1), a business entity is commencing or conducting business in this State if the business entity generates Nevada gross revenue from the extraction of gold, silver or both in this State.*

Sec. 18. *1. The gold and silver education tax is imposed on each business entity that extracts gold, silver or both in this State. To determine whether a business entity is engaging in a business in this State, the Department must consider the activities of the*

business entity and not the activities of other entities in which the business entity owns an interest.

2. Except as otherwise provided in subsection 3, and AB 495 (2021) for the purpose of determining whether a person or other entity is subject to the gold and silver education tax, a person or other entity is a business entity if the person is:

(a) An entity organized pursuant to title 7 of NRS or another equivalent statute of this State or another jurisdiction, other than an entity organized pursuant to chapter 82 or 84 of NRS.

(b) A state, national, domestic or foreign bank, whether organized under the laws of this State, another state or another country, or under federal law.

(c) A savings and loan association or savings bank, whether organized under the laws of this State, another state or another country, or under federal law.

(d) A partnership governed by chapter 87 of NRS or another equivalent statute of this State or another jurisdiction.

(e) A registered limited-liability partnership registered with the Secretary of State pursuant to NRS 87.440 to 87.500, inclusive.

(f) A business association.

(g) A joint venture, except a joint operating or co-ownership arrangement, which meets the requirements of 26 C.F.R. § 1.761-2(a)(3), Treas. Reg. § 1.761-2(a)(3), that elects out of federal partnership treatment as provided by 26 U.S.C. § 761(a).

(h) A joint stock company.

(i) A holding company.

(j) A natural person who is required to file with the Internal Revenue Service a:

(1) Schedule C (Form 1040), Profit or Loss from Business, or its equivalent or successor form;

(2) Schedule E (Form 1040), Supplemental Income and Loss, or its equivalent or successor form, if an activity of the natural person is reported on Part I of that Schedule;
or

(3) Schedule F (Form 1040), Profit or Loss from Farming, or its equivalent or successor form.

(k) Any other person engaging in a business in this State.

3. For the purpose of determining whether a person or other entity is subject to the gold and silver education tax, a person or other entity is not a business entity if the person or entity is listed in AB 495, Section 4(2), regardless of whether the person or entity is engaging in a business in this State.

4. As used in this section:

(a) "Holding company" means an entity that confines its activities to owning stock in, and supervising management of, other companies.

(b) "Joint stock company" means a common-law unincorporated business enterprise of natural persons possessing common capital with ownership interests represented by shares of stock.

(c) "Joint venture" means a partnership engaged in the joint prosecution of a particular transaction for mutual profit.

Sec. 19. 1. *Each business entity engaging in a business in the State that has Nevada gross revenue in excess of \$20,000,000 during a taxable year must file a Gold and Silver Education Tax Return for that taxable year pursuant to AB 495, Section 25. The first taxable year to which this tax applies begins January 1, 2021 and ends December 31, 2021.*

(a) To the extent the taxpayer determines that it has made an underpayment for any taxable year for which a Gold and Silver Education Tax Return has been submitted, the taxpayer shall remit the unpaid balance, including any penalties and interest, to the Department as soon as practicable. (AB495, Section 22) and (AB 495, Section 25.)

(b) To the extent the taxpayer determines that it has made an overpayment for the taxable year for which a Gold and Silver Education Tax Return has been submitted, the taxpayer shall be provided a refund or allowed to carryforward the amount of the overpayment and apply it to the amount of gold and silver education tax due in the immediately following taxable year. (AB 495, Section 22) (AB 495, Section 25.)

Sec 20. 1. *In addition to the grounds for a waiver or reduction of the penalty and interest for a late payment of the gold and silver education tax set forth in NAC 360.396, the Department may waive or reduce a penalty or interest, or both, for a late payment of the gold and silver education tax if the Gold and Silver Education Tax Return was timely filed pursuant to AB 495, Section 25(2), and the Department determines that the late payment was made because, in calculating the Nevada gross revenue of the taxpayer, the taxpayer or the taxpayer's agent relied on:*

(a) The amount of gold and silver education tax payment is at least 100 percent of the gold and silver education tax paid by the taxpayer in the immediately preceding taxable year; or

(b) The amount of gross taxable revenue upon which the taxpayer's federal income tax calculations have been based in the taxpayers most recent tax year; and

(c) The combined amount of quarterly gold and silver education tax payments are at least 90 percent of the gold and silver education tax paid by the taxpayer in the current taxable year.

2. In determining whether to waive or reduce the penalty or interest, or both, for a late payment pursuant to subsection 1, the Department may consider whether the Nevada gross revenue reported on the taxpayer's Gold and Silver Education Tax Return is:

(a) Greater than the gross proceeds reported on the Nevada Net Proceeds of Minerals Tax Return of the taxpayer for the taxable year immediately preceding the taxable year for which the gold and silver education tax was paid; or

(b) The same or similar to, the revenue reported on the federal income tax return of the taxpayer for the most recent taxable year of the taxpayer.

3. A taxpayer or the taxpayer's agent may request the waiver or reduction of the penalty or interest, or both, pursuant to subsection 1 by submitting to the Department the federal income tax return, Gold and Silver Education Tax Return or Nevada Net Proceeds of Minerals Tax Return on which the taxpayer or taxpayer's agent relied and a written statement signed under oath by the taxpayer or the taxpayer's agent which establishes that the taxpayer qualifies for the relief requested.

4. The Department shall not consider a request made pursuant to subsection 3 until the taxpayer has paid in full the gold and silver education tax upon which the interest or penalty is assessed.

5. If an overpayment of the gold and silver education tax was made because, in calculating the Nevada gross revenue of the taxpayer, the taxpayer or the taxpayer's agent relied on the information other than that described in paragraph (a) or (b) of subsection 1, the overpayment must be deemed to be made intentionally or by reason of carelessness for the purposes of AB 495, Section 30, and the Department must not allow any interest on the overpayment.

6. Provided a true-up payment is made on or before April 30, no penalties and interest shall be imposed on the amount of the underpayment in the immediately preceding quarter.

7. Any payment may be made under protest, preserving the rights of the taxpayer and any arguments that may be raised by the taxpayer relative to the final amount of gold and silver education tax due.

Sec 21. 1. The provisions of this chapter, inclusive, set forth the method for situsing to this State the gross revenue from the provision of certain business activities for the purposes of the gold and silver education tax. The provisions of this chapter are not intended to set forth a comprehensive list of business activities but provides the method for situsing to this State the gross revenue from the business activities listed. If a business activity is not specifically listed in the provisions of this chapter, inclusive, the provisions of those sections providing the method for situsing a similar business activity may provide guidance. The provision of a service that is not listed in the provisions of this chapter, inclusive, or similar to a service listed in those sections may be handled on a case-by-case basis, the revenue from

such a business activity must be situated to this State in accordance with AB 495, Section 27.

The Department reserves the right to review and adjust any situsing of gross revenue made by a business entity.

2. Situsing requirements set forth in subsection 1 notwithstanding, any revenues that may be deducted from gross revenue pursuant to AB 495, Section 26(2) need not have a situs determination.

Sec. 22. If a contract for sale of gold and silver extracted in Nevada is valued in a currency other than US dollar, the revenue reported for Gold and Silver Education Tax should be translated into US dollars with application of the Forex average exchange rate for the taxable year.

Sec. 23. Each business entity subject to the Gold and Silver Education Tax who reasonably expects its gross revenue to exceed \$20,000,000 in a taxable year may remit up to four (4) quarterly estimated pre-payments to the Department and each such payment must be submitted within 30 days of each calendar quarter ending in March, June, September and December.

Sec. 24. 1. No penalty or interest shall be assessed by the Department on the underpayment of Gold and Silver Education Tax, if:

(a) The sum of estimated pre-payments submitted for the taxable year is at least 90 percent of the Gold and Silver Education Tax liability for the taxable year, or 100 percent of the tax liability for the prior taxable year, and

(b) The return for the estimated pre-payment is filed on or before due date, and

(c) The remaining tax liability is paid with the return due on or before April 1 of the immediately following taxable year.

Sec. 25. *No interest shall be paid by the Department on the overpayment of Gold and Silver Education Tax if the sum of any estimated pre-payments submitted for the taxable year exceeds the tax liability for that year. The overpayment shall be applied:*

(a) First, to any amounts owed for any other tax owed to the Department, and

(b) Second, to the subsequent taxable year unless the business entity requests a refund in writing.

Sec. 26. *A business entity's method of accounting for gross revenue for the purposes of determining the amount of the gold and silver excise tax owed by the business entity must be the same as the business's method of accounting for federal income tax purposes for the business's federal taxable year. If a business entity's method of accounting for federal income tax purposes changes upon approval of the Internal Revenue Service, its method of accounting for gross revenue calculate for the purpose of gold and silver excise tax can be changed accordingly.*

Sec. 27. 1. *To determine the amount of the liability owed pursuant to AB 495 (2021), a taxpayer must maintain and make available to the Department upon request the following records:*

(a) General Ledger with transaction detail in Excel format.

(b) Trial Balance;

(c) Chart of Accounts;

(d) Tax return(s), original and amended;

(e) Tax return work papers, such as a reconciliation of the accounting records reflecting the adjustment in reported amounts;

(f) Federal income tax returns

(g) Bank statements

(h) Invoices;

(i) Cash receipts;

(j) Contracts;

(k) Journal records;

(l) Inventory records that pertain to extraction, processing and selling of gold and silver;

(m) Proof of affiliation, such as federal forms 851, K-1, SEC 10-K schedule of affiliates;

and

(n) Any other documentation that the Department may require to determine the liability owed pursuant to AB 495 (2021).

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