

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R152-22**

August 3, 2022

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

AUTHORITY: §§ 1 and 2, NRS 360.090; § 3, NRS 360.090 and 360.300.

A REGULATION relating to taxation; revising provisions relating to the voluntary disclosure of a taxpayer’s failure to file a tax return with the Department of Taxation; authorizing the Executive Director of the Department or a person designated by the Executive Director to extend the time for completion of an application for voluntary disclosure; transferring from the Nevada Tax Commission to the Department the responsibility of determining the sufficiency of such an application and the amount of any tax, penalty or interest owed by the taxpayer; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing regulations provide that a taxpayer who fails to file a tax return with the Department of Taxation pursuant to various provisions of statute, and who wishes to voluntarily disclose that fact to the Nevada Tax Commission, must file with the Department an application for voluntary disclosure. Any such application must be filed before the Department has initiated an audit or investigation of the taxpayer. (NAC 360.440) **Section 1** of this regulation provides for the “completion” of an application for disclosure through the filing of any required registration and delinquent tax returns for the period being disclosed, the payment of the tax estimated to be owed for that period and the submission of any additional information or material required by the Department. Under specified circumstances, **section 1** also authorizes the Executive Director of the Department or a person designated by the Executive Director to grant an extension of time for the completion of an application. **Section 2** of this regulation makes conforming changes and transfers, from the Commission to the Department, the responsibility for determining whether the tax liability of a taxpayer has been voluntarily disclosed.

Under existing regulations, if the Commission determines that a taxpayer has made a good faith effort to comply with the requirements for voluntary disclosure, the Department is prohibited from assessing the penalty and interest otherwise prescribed by statute on the entire amount of the taxpayer’s tax liability. If the Commission determines that the taxpayer’s tax liability has not been voluntarily disclosed, the Department is required to assess the prescribed penalty and interest on the entire amount of that liability. A taxpayer who wishes to dispute the assessed penalty or interest must file a petition with the Executive Director for consideration and action by the Commission. (NAC 360.446) **Section 3** of this regulation transfers the various administrative duties imposed by existing regulations from the Commission and the Executive

Director to the Department. **Section 3** further clarifies that any action taken by the Department under its authority does not affect the right of a taxpayer to request a waiver or reduction of a penalty or interest, or both, pursuant to regulatory provisions that authorize the Department to grant such a waiver or reduction in extenuating circumstances.

**Section 1.** NAC 360.440 is hereby amended to read as follows:

360.440 1. If a taxpayer fails to file a return as required by the applicable provisions of chapter 360, 362, 363C, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS and ~~he or she~~ *the taxpayer* wishes to disclose that fact voluntarily to the ~~Commission,~~ *Department*, the taxpayer or the taxpayer's representative must file with the Department an application for voluntary disclosure ~~on~~ *in* a form prescribed by the ~~Commission~~ *Department* before the Department has initiated an audit or investigation of the taxpayer.

2. ~~The Commission will not accept an application filed pursuant to subsection 1 until the application has been approved and signed by the Director. The Director shall not approve and sign~~ *Except as otherwise provided in this subsection, the Department shall accept and notify the taxpayer of the acceptance of an application for voluntary disclosure within 30 days after the application is filed. The Department shall not accept* the application until ~~he or she~~ *it* has verified that the Department did not initiate an audit or investigation of the taxpayer before the date that the taxpayer *or the taxpayer's representative* filed ~~an application with the Department pursuant to subsection 1.~~ *the application.* An application is deemed to be filed with the Department on the date the application ~~is~~ *and any required registration are* received by the Department.

3. ~~After the Director has signed and approved the application, the Commission will provide the taxpayer with a copy of the approved application.~~

~~—4.1~~ For the purposes of ~~{subsection}~~ *subsections 1 and 2*, the Department has initiated an audit or investigation of a taxpayer if the Department has:

(a) Contacted the taxpayer by telephone, in person or in writing regarding a possible tax liability ~~{}~~ or *registration requirement; or*

(b) Given the taxpayer written notice that an audit will be conducted by the Department concerning liability for the type of tax that the taxpayer wishes to disclose voluntarily pursuant to this section.

*4. The Department shall not consider the tax liability of a taxpayer as being voluntarily disclosed unless the application for voluntary disclosure is completed as required by this subsection. Except as otherwise provided in subsection 5, the application must be completed within 90 days after the date on which the notice of acceptance is given pursuant to subsection 2. The application is deemed to be complete when the taxpayer or the taxpayer's representative has:*

*(a) Filed with the Department any required registration and the delinquent tax returns for the tax estimated to be owed for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date on which the application was filed;*

*(b) Paid the tax estimated to be owed for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date on which the application was filed; and*

*(c) Submitted any additional information or material required by the Department.*

*5. If a request for an extension of time to complete an application for voluntary disclosure is made in writing to the Department after the filing of the application and within 90 days after*

*the date on which the notice of acceptance is given pursuant to subsection 2, the Director or a person designated by the Director may grant a taxpayer or the taxpayer's representative one extension of time, not to exceed 90 days, to complete the application. The request must be accompanied by proof satisfactory to the Director or his or her designee that the application cannot be completed within the time otherwise required by subsection 4 despite the exercise of ordinary care by the taxpayer or the taxpayer's representative and because of circumstances beyond the control of the taxpayer or the taxpayer's representative.*

*6. The circumstances described in subsection 5 include, without limitation:*

*(a) A natural disaster or other disaster;*

*(b) The death or hospitalization of the taxpayer or the taxpayer's representative; or*

*(c) Any other circumstance that could not reasonably have been anticipated at the time the application was filed.*

**Sec. 2.** NAC 360.444 is hereby amended to read as follows:

360.444 The ~~{Commission will}~~ *Department shall* not consider the tax liability of a taxpayer as being voluntarily disclosed if, after filing an application for voluntary disclosure pursuant to NAC 360.440, the taxpayer ~~{}~~ *or the taxpayer's representative:*

~~1. Within 90 days after the taxpayer has received a copy of the approved application, fails to file with the Department the delinquent tax returns for the tax owed for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date the application was filed pursuant to NAC 360.440;~~

~~—2.— Within 90 days after the taxpayer has received a copy of the approved application, fails to pay any tax owed for the period described in subsection 1;~~

~~—3.—~~ *Fails to timely complete the application as required by that section;*

2. Fails to make a good faith effort to comply with the applicable provisions of chapter 360, 362, 363C, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS, including, without limitation, registering with the Department, filing tax returns, paying any tax liability and remitting any taxes collected; or

~~4.~~ 3. Fails to provide an accurate estimate of his or her tax liability in the application for voluntary disclosure filed pursuant to NAC 360.440. The taxpayer shall be deemed to have provided an inaccurate estimate of his or her tax liability if:

(a) The tax liability provided in the application for voluntary disclosure is less than the taxpayer's actual tax liability by 10 percent or more; and

(b) The taxpayer is unable to demonstrate to the Department that he or she made a good faith effort to report accurately his or her tax liability in the application for voluntary disclosure.

**Sec. 3.** NAC 360.446 is hereby amended to read as follows:

360.446 1. If the ~~Commission~~ *Department* determines that the taxpayer has made a good faith effort in complying with the requirements set forth in NAC *360.440 and* 360.444, the Department shall not assess the penalty and interest set forth in NRS 360.300 on the entire amount of the tax liability.

2. If the ~~Commission~~ *Department* does not consider the tax liability of a taxpayer to be voluntarily disclosed pursuant to NAC *360.440 and* 360.444, the Department shall assess the penalty and interest set forth in NRS 360.300 on the entire amount of the tax liability.

3. A taxpayer who wishes to dispute the amount of any penalty or interest assessed by the Department pursuant to subsection 1 or 2 must file a written petition with the ~~Director~~ *Department* within 45 days after the taxpayer receives a bill from the Department for that amount. The petition must set forth any information that supports the dispute.

4. The ~~{Commission will}~~ *Department shall* review any petition filed ~~{with the Director}~~ pursuant to subsection 3 and determine the amount of any tax, penalty or interest owed by the taxpayer. The ~~{Commission will}~~ *Department shall* notify the taxpayer of its decision by registered or certified mail, return receipt requested.

5. The taxpayer ~~{must}~~ *shall* file any additional returns and pay the amount of any tax, penalty or interest that the ~~{Commission}~~ *Department* determines is owed by the taxpayer pursuant to subsection 4 within 60 days after he or she receives the notification from the ~~{Commission}~~ *Department* pursuant to subsection 4.

*6. Any action taken with respect to a taxpayer by the Department pursuant to this section does not affect the right of the taxpayer to request a waiver or reduction of a penalty or interest, or both, pursuant to NAC 360.396.*