

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R157-22

August 18, 2022

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 and 360.232.

A REGULATION relating to taxation; revising provisions governing the scheduling of an audit; revising provisions governing the calculation of delinquent taxes due if a taxpayer fails to provide necessary records to an auditor; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Department of Taxation to notify a taxpayer who is the subject of an audit by the Department. (NRS 360.232) Existing regulations require an auditor to attempt to contact a taxpayer who is the subject of an audit first by telephone to schedule an appointment for conducting the audit. (NAC 360.700) **Section 2** of this regulation removes the requirement that an auditor attempt to contact a taxpayer who is the subject of the audit by telephone and, instead, requires the auditor to attempt to contact the taxpayer by one of the preferred methods of contact for the taxpayer that is on file with the Department. **Section 1** of this regulation makes a conforming change.

Existing regulations authorize an auditor to determine an amount of delinquent taxes due from records provided by a taxpayer in the event the taxpayer fails to provide all of the records necessary to complete an audit by the estimated completion date or revised estimated completion date of the audit. (NAC 360.700) **Section 2** of this regulation authorizes an auditor to determine or estimate an amount of delinquent taxes due from the records provided.

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 wishes to disclose that fact voluntarily to the Commission, the taxpayer or the taxpayer’s representative must file with the Department an

application for voluntary disclosure on a form prescribed by the Commission 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 the application until he or she has verified that the Department did not initiate an audit or investigation of the taxpayer before the date that the taxpayer filed an application with the Department pursuant to subsection 1. An application is deemed to be filed with the Department on the date the application is 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. For the purposes of subsection 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 *or using a preferred method of contact for the taxpayer that is on file with the Department* regarding a possible tax liability; 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.

Sec. 2. NAC 360.700 is hereby amended to read as follows:

360.700 1. As soon as practicable after selection of an account for audit, the auditor assigned to the audit shall attempt to contact the taxpayer ~~by telephone~~ to schedule an appointment that is convenient for the taxpayer and the auditor for the purpose of performing the audit. *The auditor shall first attempt to contact the taxpayer using the primary preferred*

method of contact for the taxpayer that is on file with the Department. If the auditor is unable to contact the taxpayer ~~by telephone,~~ *using the primary preferred method of contact, the auditor shall attempt to contact the taxpayer using the secondary preferred method of contact for the taxpayer that is on file with the Department. If the auditor is unable to contact the taxpayer using the primary or secondary preferred method of contact,* the auditor shall send a letter to the taxpayer requesting the taxpayer to contact the auditor to schedule an appointment for the purpose of performing the audit.

2. In scheduling an audit, the auditor and the taxpayer must discuss:

- (a) A date on which to commence the audit;
- (b) An estimate of the date by which the audit ~~will~~ *may* be completed;
- (c) The first and last months of the audit period;
- (d) The nature of the business being audited and the availability of records;
- (e) The hours during which the records will be available for review by the auditor;
- (f) The contact person with whom the auditor is to work in conducting the audit and

reviewing the results of the audit; and

(g) The criteria set forth in subsection 4 for changing the period that the audit will cover and extending the commencement date or estimated completion date, or both, of the audit.

3. After contacting the taxpayer pursuant to subsection 1, the auditor shall send a letter to the taxpayer which includes:

- (a) The date, time and location of the first appointment for the audit;
- (b) The first and last months of the audit period;
- (c) The records that the taxpayer must make available for the audit;
- (d) The estimated completion date of the audit;

(e) A copy of the Taxpayers' Bill of Rights;

(f) A copy of each statute that authorizes the Department to perform an audit and issue a deficiency determination, if necessary, and the process for appealing such a determination; and

(g) The name and telephone number of the auditor and the supervisor of the auditor.

4. The criteria to be used by the Department in determining whether to change the period that the audit will cover and to extend the commencement date or estimated completion date, or both, of the audit include, without limitation:

(a) The time required by the taxpayer to gather records necessary for the audit; and

(b) Circumstances determined by the Department to be beyond the control of the taxpayer or the Department.

5. A taxpayer may request an extension of the commencement date or estimated completion date, or both, of the audit. Such a request must be submitted in writing to the auditor and must set forth the reason for the request. The auditor shall, on good cause shown, grant a reasonable extension and shall notify the taxpayer in writing of the revised commencement date or the revised estimated completion date, or both, of the audit. If an extension is granted, the statute of limitations for the finding of a deficiency will not be tolled during the period of the extension and a waiver of the statute of limitations must be obtained from the taxpayer or the audit period must be adjusted to account for the extension.

6. If a taxpayer fails to provide the records necessary to complete an audit by the estimated completion date or revised estimated completion date, the auditor may:

(a) Determine *or estimate* an amount of delinquent taxes due from the records provided;

(b) If the taxpayer has not provided any records, estimate an amount of delinquent taxes due based on information regarding the taxpayer that the Department has in its possession, including, without limitation, any returns filed by the taxpayer; or

(c) Request the Department to issue a subpoena for the production of records by the taxpayer.