

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R158-22

August 2, 2022

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

AUTHORITY: § 1, NRS 360.090, 360.093, 360.294, 360.417 and 360.419.

A REGULATION relating to taxation; revising provisions relating to the waiver or reduction of a penalty or interest, or both, for the late payment of certain taxes and fees; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

If a taxpayer fails timely to pay certain taxes and fees, existing law provides for the imposition of a penalty and interest, but also authorizes or requires the Department of Taxation to waive all or part of the penalty or interest, or both, in certain circumstances. (NRS 360.294, 360.417, 360.419) Under existing regulations, the Department is required to waive or reduce a penalty or interest, or both, for a late payment if the total penalty and interest for the late payment is \$15 or less. (NAC 360.396) This regulation clarifies that this amount is to be computed as of the date the payment is made.

Existing regulations also authorize the Department to waive or reduce a penalty or interest, or both, for a late payment if the delinquency is determined to have been caused by circumstances beyond the control of the taxpayer or the taxpayer’s agent. (NAC 360.396) This regulation: (1) expands the scope of these provisions to include any penalty or interest resulting from the late filing of a return; (2) limits the applicability of any waiver or reduction to any single period for which a payment is required to have been made or a return is required to have been filed; and (3) in certain circumstances, authorizes the Department to grant such a waiver or reduction without the approval of the Nevada Tax Commission.

Section 1. NAC 360.396 is hereby amended to read as follows:

360.396 1. The Department shall waive or reduce a penalty or interest, or both, for a late payment if the total penalty and interest for the late payment is \$15 or less ~~+~~ *as of the date the payment is made.*

2. ~~{The}~~ *With respect to any single period for which a payment is required to have been made or a return is required to have been filed, the* Department may waive or reduce a penalty or interest, or both, for a late payment *or the late filing of a return* if the late payment *or late filing* is determined by the Department to have been caused by circumstances beyond the control of the taxpayer or the taxpayer's agent , *including, without limitation, the error of an employee of the taxpayer or the taxpayer's agent*, and occurred despite the exercise of ordinary care and without intent.

3. In determining whether to waive or reduce the penalty or interest, or both, for a late payment *or the late filing of a return* pursuant to subsection 2, the Department may consider:

- (a) The *taxpayer's* history of compliance and timely payment ~~{of the taxpayer;}~~ *and filing;*
- (b) The weight and sufficiency of the evidence supporting the request of the taxpayer to waive or reduce the penalty or interest, or both, for the late payment ~~{}~~ *or late filing;*
- (c) Any evidence which shows that the late payment *or late filing* was caused by circumstances that were not directly related to the actions of the taxpayer or the taxpayer's agent, including, without limitation:

- (1) Fire, earthquake, flood or other acts of God, theft, or the death or serious illness of the taxpayer or the taxpayer's agent or a member of the immediate family of the taxpayer;

- (2) An error or the misconduct of an employee of the taxpayer ~~{}~~ *or the taxpayer's agent*, including, without limitation, embezzlement; *and*

- (3) Erroneous written information provided to the taxpayer or the taxpayer's agent by the Department; and

~~{(4) The misaddressed but timely mailing of the return or payment; and}~~

- (d) Any other factor deemed by the Department to be relevant.

4. The Department may waive or reduce the penalty or interest, or both, pursuant to subsection 2 without the approval of the Commission if the taxpayer:

(a) Has not previously requested such a waiver or reduction;

(b) Has not incurred any penalties or interest during the 36 months immediately preceding the beginning of the period for which the waiver or reduction is requested; and

(c) Has timely made all required payments and filed all required returns after the end of the period for which the waiver or reduction is requested.