

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R044-01

Effective November 1, 2001

(Replaces the adopted version filed with the Secretary of State on 11/1/2001)

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

AUTHORITY: §§1-3, NRS 360.090, 360.093 and 360.419.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 4, if a taxpayer has made a late payment on a monthly, quarterly or annual return that he filed with the department for a tax imposed pursuant to chapter 362, 364A, 369, 370, 372, 372A, 374, 375B, 376A, 377 or 377A of NRS and the department has not issued a notice of a deficiency determination pursuant to NRS 360.350 relating to that return:

(a) The department shall waive the penalty and interest for the late payment if:

(1) The total penalty and interest for the late payment is \$5 or less; or

(2) The late payment:

(I) Is the only late payment for that tax that the taxpayer has submitted in the 12 months immediately preceding the period for which the late payment was made if the tax was imposed pursuant to chapter 364A, 369, 370, 372, 372A, 374, 375B, 376A, 377 or 377A of NRS, or in the 24 months immediately preceding the period for which the late payment was made if the tax was imposed pursuant to chapter 362 of NRS;

(II) Was received by the department within 45 days after the date on which the payment was due; and

(III) Is determined by the department to have been caused by circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

(b) The department shall reduce the penalty and interest on the late payment by the amount set forth in subsection 2 if:

(1) The taxpayer had made only one other late payment for the same tax during the 12 months immediately preceding the period for which the most recent late payment was made if the tax was imposed pursuant to chapter 364A, 369, 370, 372, 372A, 374, 375B, 376A, 377 or 377A of NRS, or during the 24 months immediately preceding the period for which the most recent late payment was made if the tax was imposed pursuant to chapter 362 of NRS; and

(2) The department determines that the most recent late payment was made as a result of circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

(c) The department may waive the penalty and interest on the late payment if the department determines that the late payment was made as a result of circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

2. If the department must reduce the penalty and interest on a late payment pursuant to paragraph (b) of subsection 1:

(a) The penalty assessment for the late payment will be not more than:

(1) Two percent of the tax if the payment is not more than 2 days late.

(2) Four percent of the tax if the payment is not more than 5 days late.

(3) Six percent of the tax if the payment is not more than 10 days late.

(4) Eight percent of the tax if the payment is not more than 15 days late.

(b) The interest on the late payment will be reduced by the rate of reduction of the penalty applied by the department pursuant to paragraph (a).

3. In determining, for the purposes of subsection 1, whether or not the circumstances which caused the late payment were beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent, the department shall consider evidence which shows that the late payment was caused by circumstances that were not directly related to the actions of the taxpayer or his agent, including, without limitation, fire, earthquake, flood or other acts of God, theft, the death or serious illness of the taxpayer or his agent or a member of the immediate family of the taxpayer, an error or the misconduct of an employee of the taxpayer, erroneous written information provided to the taxpayer or his agent by the department and the misaddressed but timely mailing of the return or payment. The existence of an event described in this subsection does not create a conclusive presumption of eligibility for a waiver or reduction of the penalty or interest on a late payment pursuant to this section.

4. The provisions of this section do not apply to a taxpayer who has entered into a settlement agreement with the department that has been approved by the commission.

Sec. 2. NAC 360.400 is hereby amended to read as follows:

360.400 1. ~~[/The] Except as otherwise provided in subsection 7, the~~ department may waive or reduce the penalty or interest for a ~~[delinquent payment of tax which was imposed pursuant to NRS 360.417 if it]~~ deficiency for which a notice of a deficiency determination has

been issued by the department pursuant to NRS 360.350, if the department finds that the

~~*[proximate cause of the delinquent payment was:*~~

~~*—(a) Circumstances completely] deficiency was caused by circumstances beyond the control of the [business that was required to make the payment, or its agents;*~~

~~*—(b) Justifiable negligence or inadvertence, and that the business making the payment has no history of habitually delinquent payments; or*~~

~~*—(c) For good cause shown.*~~

~~*—2.— Any application for] taxpayer against whom the deficiency determination was made or his agent and occurred despite the exercise of ordinary care and without intent.*~~

2. Such a taxpayer or his agent may request a waiver or reduction of the penalty or interest for [a delinquent payment] the deficiency by filing a statement with the department that contains the facts underlying the circumstances that caused the deficiency. The department shall treat such a statement in the same manner provided in chapter 360 of NRS for a petition for redetermination. Except as otherwise provided in this subsection, the statement must be filed in writing with the department within [60] 45 days after the date [the tax is paid setting forth the circumstances which caused the delinquent payment.

~~*—3.] on which the taxpayer is served with a notice of a deficiency determination for the deficiency pursuant to NRS 360.350. If the notice of the deficiency determination is served by mail, the period for filing a statement pursuant to this subsection will be extended by 3 days. The statement must be witnessed by a notary public or contain an acknowledgment that it is signed under penalty of perjury.*~~

3. *If a taxpayer has filed a petition for redetermination, he may request in writing a waiver or reduction of the penalty or interest on the deficiency any time before a final decision is issued on the petition for redetermination.*

4. In determining, *for the purposes of subsection 1*, whether or not the circumstances which caused the ~~[delinquent payment in any particular case were completely]~~ *deficiency were* beyond the control of the ~~[business required to make the payment, the commission will consider only]~~ *taxpayer against whom the deficiency determination was made or his agent and occurred despite the exercise of ordinary care and without intent, the department shall consider* evidence which shows that the ~~[delinquent payment was proximately]~~ *deficiency was* caused by *circumstances that were not directly related to the actions of the taxpayer or his agent, including, without limitation*, fire, earthquake, flood or other acts of God, theft, ~~for similar causes not directly related to the actions of the business that was required to make the payment, whether intentional or negligent.~~

~~—4.— If the department finds that a delinquent payment was caused by circumstances completely beyond the control of the business required to make the payment, or its agents, and that the tax was paid as soon as reasonably possible thereafter, the penalty imposed for the delinquent payment will be reduced to a total of not more than 1 percent of the tax or the amount of the tax and the interest will be reduced at a rate equal to the reduction in penalty.~~

~~—5.— If the department finds that the cause of the delinquent payment was justifiable negligence or inadvertence, that the business making the delinquent payment has not submitted more than one other delinquent payment in the preceding 12 months and that the payment was made as soon as reasonably possible thereafter:~~

~~—(a) The penalty for the delinquent payment will be:~~

~~——(1) Not more than 2 percent of the tax or the amount of the tax if the payment is not more than 2 days late.~~

~~——(2) Not more than 4 percent of the tax or the amount of the tax if the payment is not more than 5 days late.~~

~~——(3) Not more than 6 percent of the tax or the amount of the tax if the payment is not more than 10 days late.~~

~~——(4) Not more than 8 percent of the tax or the amount of the tax if the payment is not more than 15 days late.~~

~~——(5) Not more than 10 percent of the tax or the amount of the tax if the payment is more than 15 days late.~~

~~—(b) The interest on the delinquent payment will be reduced by an amount equal to the rate of reduction of the penalty applied by the department pursuant to paragraph (a).~~

FLUSH ~~If the total penalty and interest after any reduction equals \$5 or less, the penalty and interest will be waived.~~

~~—6. In determining whether the proximate cause of the delinquent payment was for good cause shown, the department will require the taxpayer to submit, without limitation, evidence that:~~

~~——(a) The assessment of penalties and interest constitutes an extreme financial hardship;~~

~~——(b) The assessment of interest and penalties is equal to or greater than two-thirds of the amount of the tax which is due; or~~

~~——(c) The assessment of penalties and interest is extremely unfair or inequitable under the circumstances.~~

~~—7.— The department will not consider an application to waive or reduce penalties or interest, or both, imposed on a taxpayer if] the death or serious illness of the taxpayer or his agent or a member of the immediate family of the taxpayer, erroneous written information provided to the taxpayer or his agent by the department and the misaddressed but timely mailing of the return or payment. The existence of an event described in this subsection does not create a conclusive presumption of eligibility for a waiver or reduction of the penalty or interest on a deficiency pursuant to this section.~~

5. If the assessment of a tax is accompanied by the assessment of a penalty based upon negligence, fraud or intent to evade the tax ~~[which has become final.~~

~~—8.— For the purposes of this section, “extreme financial hardship” means that the person who owes the tax has the present ability to pay the tax, but payment of the penalties and interest will render the person insolvent and unable to continue in business.] pursuant to NRS 360.330 or 360.340, the department shall not consider a request to waive or reduce the penalty or interest on the deficiency pursuant to this section unless the department determines that there is insufficient evidence to show negligence, fraud or intent to evade the tax.~~

6. If the department denies a request by a taxpayer for a waiver or reduction of a penalty or interest on a deficiency pursuant to this section, the taxpayer may appeal the decision by filing a written notice of appeal with the department within 30 days after the taxpayer has been served with the decision of the department denying the request. Upon receipt of such a notice of appeal, the department shall schedule a hearing for the appeal. The taxpayer must be given 10 days’ notice of the time and place of the hearing. The procedures set forth in chapter 360 of NRS for a hearing on a petition for redetermination apply to a hearing on an appeal of the denial of a request for a waiver or reduction of a penalty or interest on a deficiency.

7. The provisions of this section do not apply to a taxpayer who has entered into a settlement agreement with the department that has been approved by the commission.

Sec. 3. NAC 360.480 is hereby amended to read as follows:

360.480 1. ~~[NAC 360.043 to 360.200, inclusive, does not afford a person claiming a refund a right to a hearing.~~

~~—2.]~~ A claim for a refund must be accompanied by:

- (a) A statement setting forth the amount of the claim;
- (b) A statement setting forth all grounds upon which the claim is based;
- (c) All evidence the claimant relied upon in determining the claim, including affidavits of any witnesses; and
- (d) Any other information and documentation requested by the department.

~~[3.—If a person files a claim for a refund in a contested case, all contested issues involved in the case shall be deemed to have been raised in the claim.]~~

2. A claim for a refund of interest or a penalty that was imposed pursuant to chapter 372 of NRS and that was paid by the taxpayer must be filed within 3 years after the date of payment of the interest or penalty or the deficiency determination, whichever is later.

3. A claim for a refund of interest or a penalty that was not imposed pursuant to chapter 372 of NRS and that was paid by the taxpayer must be filed within 2 years after the date of payment of the penalty or the deficiency determination, whichever is later.

INFORMATIONAL STATEMENT
Permanent Regulation of the Nevada Tax Commission

LCB File No. R044-01

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 360.

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on October 29, 2001 and continued to October 30, 2001 at the Washoe County Health Department, Conference Room A & B, 1001 East 9th Street, Reno, Nevada. It appears that due to the primarily procedural nature of the proposed regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (702) 687-4896, or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed regulation was submitted to the Legislative Counsel Bureau, which completed its review and revisions on July 31, 2001. Thus, the proposed regulation, for practical purposes, was discussed at two workshops and has been heard and considered at one public hearing of the Nevada Tax Commission.

- 2. The number of persons who:**
- (a) Attended the hearing: 37**
 - (b) Testified at the hearing: 3**

(c) **Submitted to the Tax Commission written comments:** No written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 150 interested businesses and persons on the Department of Taxation's mailing list.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Sections 1, 2, 3 and 4 of the proposed regulation were modified prior to adoption, due to issues raised by the Department of Taxation and by affected or interested businesses and persons to allow the waiver procedures to apply to NRS Chapter 362 (i.e., the net proceeds of minerals tax). The remaining language of the proposed regulation were not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation or Tax Commission members, and the Tax Commission believed no changes other than those made were necessary.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.

(a) Adverse and beneficial effects.

The proposed regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public. There may be some beneficial economic effects to businesses and to the general public with respect to the overall process of potential waivers of penalties and/or interest owed.

(b) Immediate and long-term effects.

Same as #5(a) above.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The proposed regulation presents no foreseeable or anticipated cost for enforcement.

7. A description of any regulations of other state or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no known federal regulations pertaining to the state's tax procedures, which are the subject of the proposed regulation.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulation does not provide a new fee or increase an existing fee.