

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R044-01**

July 31, 2001

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

AUTHORITY: §§ 1, 2 and 3, NRS 360.090 and 360.093.

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

*1. The department shall waive the penalty for a late payment on a monthly or quarterly return if:*

*(a) The taxpayer making the late payment has not submitted any other late tax payment in the 12 months immediately preceding the period for which the late payment was made;*

*(b) The late payment was received by the department within 45 days after the due date; and*

*(c) The department determines that the late payment was caused by circumstances beyond the control of the taxpayer or his agent. Such circumstances include, 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, substantiated errors of the United States Postal Service and the timely but misaddressed mailing of the return or payment.*

*2. If the taxpayer has not submitted more than one other late tax payment or return in the 12 months immediately preceding the period for which the late payment was made, and the*

*department finds 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 to submit the payment after the due date:*

*(a) The penalty assessment for the late payment of the tax will be:*

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

*(2) Not more than 4 percent of the tax if the payment is not more than 5 days late.*

*(3) Not more than 6 percent of the tax if the payment is not more than 10 days late.*

*(4) Not more than 8 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. If the total penalty and interest assessed is \$5.00 or less after any reduction pursuant to subsection 2, the department shall waive the penalty and interest.*

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

360.400 1. ~~[The]~~ *Except as otherwise provided in section 1 of this regulation, the department may waive or reduce the penalty or interest for ~~[a delinquent]~~ failure to file a timely return or the late payment of a tax which was imposed pursuant to chapter 364A, 369, 370, 372, 372A, 374, 375B, 376A, 377 or 377A of NRS ~~[360.417]~~ if it finds that the ~~[proximate]~~ cause of the ~~[delinquent] late filing or~~ payment was:*

*(a) Circumstances ~~[completely]~~ 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 or his agent; and

*(b) That the filing or payment was filed or paid late despite the exercise of ordinary care and without the intent to file the return or make the payment after the due date.*

2. A taxpayer or his agent may request a waiver or reduction of the penalty or interest for a ~~[delinquent payment]~~ late filing or payment pursuant to this section by filing a statement with the department that contains the facts underlying the circumstances that caused the late filing or payment. The department shall treat such a statement in the same manner provided in this chapter for a petition for redetermination. Except as otherwise provided in subsection 3, 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. 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 acknowledgement that it is signed under penalty of perjury.

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

4. In determining , for the purposes of paragraph (a) of subsection 2, whether or not the circumstances which caused the ~~[delinquent payment in any particular case were completely]~~ late filing or payment were beyond the control of the ~~[business]~~ taxpayer or his agent required to make the payment, the ~~[commission]~~ department will consider ~~[only]~~ evidence which shows that the ~~[delinquent]~~ late filing or payment was ~~[proximately]~~ 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, an error or the misconduct of an employee of the taxpayer, erroneous written information provided to the taxpayer or his agent by the department, substantiated errors of the United States Postal Service and the misaddressed but timely mailing of the return or payment. The existence of any such circumstance does not create a conclusive presumption of eligibility for a waiver or reduction of the penalty or interest.*~~

7. *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.] , the department will not consider an application to waive or reduce the penalty or interest unless the department determines that there is insufficient evidence to show negligence, fraud or intent to evade the tax.~~

*8. If a request for a waiver or reduction of a penalty or interest is denied, the taxpayer may appeal the decision by filing a notice of appeal with the department within 30 days after the taxpayer has been served the decision of the department. Upon receipt of such a notice of appeal, the department will 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 this chapter 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.*

**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.

*4. 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.*

*5. 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.*