

LCB File No. R045-01

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

(This proposed regulation was previously adopted as LCB File No. T017-01)

Explanation: Additions are in *italics*, deletions are within brackets **[]**.

New sections to be added to NAC 360 are as follows:

Section 1. Scheduling of Audit Time Period.

- A. At the start of every audit, the auditor shall attempt to contact the taxpayer by telephone to schedule a time for the audit that is mutually convenient. If the auditor fails to contact the taxpayer by telephone, a letter shall be sent to the taxpayer requesting the taxpayer contact the auditor to schedule an appointment. When the taxpayer and the auditor make contact, they should discuss the following:*
- 1. A date to begin the audit;*
 - 2. An estimate of the date the audit is scheduled to be completed;*
 - 3. Beginning and ending months of the audit period;*
 - 4. The nature of the business and the availability of records;*
 - 5. The hours the records are available for review;*
 - 6. With whom the auditor is to work with in conducting the audit and reviewing the audit results; and*
 - 7. The criteria for extending the audit or changing the audit period or for changing the Estimated Completion Date.*
- B. The auditor shall send the taxpayer a confirmation letter with the following information:*
- 1. The date, time and location the audit appointment is scheduled to begin;*
 - 2. The beginning and ending months of the audit period;*
 - 3. The minimum records the taxpayer needs to provide;*
 - 4. The estimated date the audit is scheduled to be completed (hereinafter “Estimated Completion Date”), which is established by the issuance of the letter of determination;*
 - 5. A copy of the Taxpayers’ Bill of Rights;*
 - 6. Copies of the statutes that inform taxpayers of the Department’s authority to perform audits and issue determinations. Also to be included are copies of the statutes explaining the appeals process for audit disputes, including the initial appeal to a Hearing Officer, an*

appeal to the Nevada Tax Commission, and a petition for judicial review; and

7. *The auditor's name and telephone number and the name and telephone number of the auditor's supervisor.*

C. Changes in Estimated Completion Date.

1. *The criteria for changes in the Estimated Completion Date and/or audit period include, but are not limited to, the following:*

- a. *Time for the taxpayer to gather additional records;*
- b. *Circumstances beyond the control of either the taxpayer or the Department.*

2. *Any request by a taxpayer for an extension of time for the audit shall be made in writing and shall set forth a specific reason for the request. The auditor shall grant a reasonable extension and shall confirm the extension in writing and provide a new completion date to the taxpayer. An extension of time under this provision does not permit taxes to be waived if a deficiency is found and waivers will be obtained for the appropriate periods, which would fall out of statute due to the extension. If a taxpayer fails to provide records necessary to complete the audit by the Estimated Completion Date, the auditor shall do any of the following:*

- a. *Determine an estimated amount due from the limited records provided.*
- b. *If no records were provided, estimate a deficiency based upon any information the Department may have in its possession or information contained in the returns that were filed.*
- c. *Issue a subpoena for the production of books and records.*

Section 2. Taxpayers' Reliance on Written Advice.

A. If during the course of an audit, the taxpayer provides written documentation in accordance with NRS 360.294, the auditor shall document the facts and circumstances relating to the issue for the audit file. The auditor shall continue auditing the taxpayer's records until the Executive Director has had time to review the documents in question.

B. The Executive Director shall make a decision regarding whether or not to recommend to the Nevada Tax Commission to waive tax, interest and penalty, if any, of the disputed reporting position.

C. For purposes of NRS 360.294, examples of written advice from the Department to the taxpayer include, but are not limited to, the following:

1. *An advisory opinion issued by the Department pursuant to NAC 360.190 through 360.200, in response to a taxpayer's request for advice on a particular issue wherein the facts set forth in the request are sufficiently similar to the transactions under review in the current audit.*
2. *A letter issued by the Department to the taxpayer regarding how to handle the specific types of transactions under review in the current audit.*
3. *Written documentation establishing that the taxpayer had been audited by the Department previously and had been assessed or given credit on the types of transactions under review in the current audit.*
4. *A letter issued by the Department to the taxpayer defining the items, scope and issues that were reviewed in a prior audit which are sufficiently similar to transaction under review in the current audit. The fact that a prior audit was performed is not sufficient to relieve the taxpayer of liability in a current audit. The taxpayer must demonstrate with written documentation from the Department that the types of transactions included in the current audit were within the scope of review in the prior audit.*
5. *A Nevada Tax Commission decision addressing the issue and sufficiently similar in facts and circumstances as the transactions under review in the current audit.*
6. *An Attorney General's opinion or decision addressing the issue and sufficiently similar in facts and circumstances as the transactions under review in the current audit.*

Section 3. Letter Addressing the Audit Issues (Exit Letter)

Upon completion of the audit, the Department shall issue a letter outlining the issues that were addressed in the audit. The letter shall address the issues reviewed, the period of time under review for each section of the audit, including sample months, if applicable, and the results of that review. The Department will notify the taxpayer of the proper method of collecting or accruing tax on the types of transactions in question.

Section 4. Petitions for Redetermination.

- A. *The Department shall issue notices of proposed deficiency determinations by certified to taxpayers by the Estimated Completion date. If a taxpayer disputes the audit findings, a petition for redetermination must be filed with the Department in accordance with NRS 360.360 within 45 days after the taxpayer is provided notice of a deficiency determination. The petition for redetermination must be postmarked by the 45th day after receipt of the audit deficiency determination.*
- B. *The Executive Director may extend the time to file a petition for redetermination if the request is made in writing to the Department. A request for an extension of time to file a petition for redetermination will be accepted if the Executive Director finds good cause for the delay. The following criteria establish good cause:*
 - a. *The failure to file was without intent;*

- b. Circumstances existed which were beyond the taxpayer's control; and*
- c. The failure to file occurred despite the exercise by the taxpayer of ordinary care.*

Examples of good cause which satisfy the criteria include, but are not limited to, natural disasters that caused an inability of the taxpayer to file the petition timely, death or hospitalization of the person who has the responsibility to file the petition for redetermination, or fire or other disasters not under the control of the business, or such other facts or circumstances as determined by the Nevada Tax Commission, causing an inability to file the petition for redetermination timely.

C. All petitions for redetermination will be immediately forwarded to a hearing officer for consideration.

D. The hearing officer may request that the parties file prehearing statements. Prehearing Statements are to be filed jointly whenever possible. If the parties cannot agree on a Joint Prehearing Statement, each party is to file their own statement by the due date set by the hearing officer.

1. Prehearing statements are limited to a brief explanation of the issues from the audit to be determined by the hearing officer. Prehearing statements are to include:

- a. A statement of the issues, which have not been resolved, that will be presented to the hearing officer. This statement should, if possible, describe the nature of the transaction at issue, the amount in dispute, the location of the transaction(s) on the auditor's work papers, and the legal issue pertaining to the issue.*
- b. A statement of the issues that the parties have resolved.*
- c. A statement of all uncontested facts.*
- d. A list of exhibits that each party expects to introduce into evidence at the hearing and any objections thereto. All exhibits are to be pre-marked for the record.*
- e. A list of witnesses that each party expects to call upon to provide testimony at the hearing.*
- f. A statement regarding whether the parties wish to submit post-hearing briefs.*
- g. A statement of the estimated time that is necessary for the hearing.*

2. Prehearing statements are to be filed by the due date set by the hearing officer. Extensions may be granted if the motion or stipulation requesting additional time is filed with the hearing officer prior to the due date of the statement.

3. *Failure to file a prehearing statement by either party does not stop the hearing process. Instead, a hearing will be scheduled giving at least 10 days notice to the parties.*

E All issues in dispute should be included in the prehearing statement(s) submitted by the parties. If any new or additional issues are raised at or just prior to the hearing, continuances should be freely granted by the hearing officer in order to allow the opposing party adequate time to respond or prepare.

F. When issuing a deficiency determination, the Department shall provide the taxpayer with the petition for redetermination form to complete and file. Petitions for redetermination may also be in letter form, provided the letter contains information sufficient to put the Department on notice that the taxpayer is disputing the proposed audit deficiency, which may include the taxpayer's name, account number, and amount of tax, interest or penalty in dispute. Taxpayers are not required to use any specific format to petition any deficiency determination issued by the Department.