

**PROPOSED REGULATION OF THE DEPARTMENT OF
TAXATION**

LCB File No. R045-01

June 20, 2001

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

AUTHORITY: NRS 360.090, 360.093.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *Immediately following service of a notice of audit, the auditor shall attempt to contact the taxpayer by telephone to schedule a time for the audit that is convenient to the taxpayer and the auditor. If the auditor is not able to contact the taxpayer by telephone, he shall send a letter to the taxpayer requesting the taxpayer to contact the auditor to schedule an appointment. When the auditor contacts the taxpayer, the auditor must discuss:*

- (a) A date to begin the audit;*
- (b) An estimate of the date the audit is scheduled to be completed;*
- (c) The first and final months of the audit period;*
- (d) The nature of the business and the availability of records;*
- (e) The hours that the records are available for review;*
- (f) The person with whom the auditor is to work in conducting the audit and reviewing the results of the audit; and*
- (g) The criteria for extending the audit, changing the audit period and changing the estimated completion date, as set forth in the notice of audit.*

2. The auditor shall, after contacting the taxpayer pursuant to subsection 1, send a letter to the taxpayer which contains:

(a) The date, time and location the first appointment for the audit is scheduled;

(b) The first and final months of the audit period;

(c) The records that the taxpayer must provide at the first appointment for the audit;

(d) The estimated date the audit is scheduled to be completed;

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

(f) A copy of each statute that informs the taxpayer of the authority of the department to perform an audit and issue a determination, the appeal process, including, without limitation, the initial appeal to a hearing officer, the Nevada Tax Commission and a petition for judicial review; and

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

3. The criteria to be used in determining whether to change the estimated completion date pursuant to subsection 1 include, without limitation:

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

(b) Circumstances beyond the control of the taxpayer or the department.

4. A request by a taxpayer for an extension of the start date of the audit must be submitted in writing and must set forth the reason for the request. The auditor shall grant a reasonable extension and shall notify the taxpayer in writing of the extension and a new estimated completion date for the audit. If a taxpayer who has made such a request fails to provide the records necessary to complete the audit by the estimated completion date, the auditor may:

(a) Determine an amount due from the records provided;

(b) If the taxpayer has not provided any records, estimate an amount due upon the basis of any information that the department has in its possession, including, without limitation, any returns filed by the taxpayer; or

(c) Issue a subpoena for the production of records.

Sec. 3. 1. *If a taxpayer provides written documentation during an audit that indicates that the taxpayer relied upon certain written advice, opinions or audits from the department to his detriment, the auditor shall document the facts and circumstances relating to the issue for the audit file and shall continue the audit. The director shall review the documents submitted by the taxpayer pursuant to this subsection as provided by NRS 360.294.*

2. The director shall decide whether to recommend a waiver of the tax, interest or penalty to the Nevada Tax Commission based on the information provided by the taxpayer pursuant to subsection 1.

3. Examples of written advice for the purposes of subsection 2 include, without limitation:

(a) An advisory opinion issued by the department pursuant to NAC 360.190, 360.195 and 360.200 in response to the request of a taxpayer for advice on an issue, if the facts contained in the request are similar to the facts of the transactions under review in the current audit;

(b) A letter issued by the department to the taxpayer regarding the manner in which to conduct the specific types of transactions under review in the current audit;

(c) Written documentation that establishes that the taxpayer has been previously audited by the department and has been assessed or given credit for the specific types of transactions under review in the current audit;

(d) A letter issued by the department to the taxpayer that defines the items, scope and issues reviewed in a prior audit which are similar to the specific types of transactions under review in

the current audit. The occurrence of a prior audit is not conclusive evidence that relieves the taxpayer of liability in the current audit; and

(e) A decision of the Nevada Tax Commission or the Attorney General that addresses an issue and circumstances that are similar to the specific transactions under review in the current audit.

Sec. 4. Upon completion of the audit, the department will issue a letter outlining the issues reviewed in the audit, the period of time under review for each section of the audit and sample months, if applicable, and the results of the review. The department will notify the taxpayer of the proper method of collecting or accruing tax on the specific types of transactions reviewed during the audit.

Sec. 5. 1. The department will issue notices of proposed deficiency determinations by certified mail on or before the estimated completion date of the audit. If a taxpayer disputes the findings of the audit, he must file a petition for redetermination within 45 days of the notice of a deficiency determination pursuant to NRS 360.360.

2. When issuing a deficiency determination, the department will provide the taxpayer with a form for the filing of a petition for redetermination. A petition for redetermination may also be submitted in the form of a letter, but it must contain information sufficient to give notice to the department that the taxpayer is disputing the deficiency determination. Such information includes, without limitation, the name of the taxpayer, his account number, and the amount of the tax, interest or penalty in dispute. A taxpayer is not required to use a specific format in his petition for redetermination.

3. The director may grant an extension for the filing of a petition for redetermination if the request is made in writing to the department and the director finds good cause for the

extension if the failure to file the request for an extension was without intent, the taxpayer exercised ordinary care, but circumstances beyond the control of the taxpayer prohibited the timely filing of such a request. Such circumstances include, without limitation, a natural disaster or other disaster beyond the control of the taxpayer, the death or hospitalization of the person responsible for filing the petition for redetermination.

4. A petition for redetermination will be sent to a hearing officer immediately upon receipt by the department.

5. The hearing officer may request that a party file a prehearing statement. If possible, such statements must be filed jointly. If the parties cannot agree on a statement, each part must file its statement by the due date. A prehearing statement is limited to a brief explanation of the issues from the audit for the consideration of the hearing officer. The statement must include:

(a) The unresolved issues that will be presented to the hearing officer, the nature of the specific transaction at issue, the amount in dispute, the location of the transaction on the work papers ||| of the auditor, and the legal issues involved in the appeal.

(b) The resolved issues.

(c) Uncontested facts.

(d) A list of exhibits that each party expects to introduce at the hearing and any objections to such exhibits. The exhibits must be marked in advance of the hearing.

(e) A list of the witnesses that each party expects to testify at the hearing.

(f) An estimate of the time required for the hearing.

(g) Whether a party will submit a post-hearing brief.

6. A prehearing statement must be filed by the due date set by the hearing officer. The hearing officer may grant an extension if the motion or stipulation that requests an extension is filed with the hearing officer before the due date of the statement.

7. If a party does not submit a prehearing statement, the hearing officer shall schedule a hearing and provide at least 10 days' notice to the parties.

8. If a party wishes to raise an issue that it did not include in its prehearing statement, the hearing officer shall grant a continuance to permit the opposing party to prepare a response to such an issue.