

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R046-01

Effective November 1, 2001

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

AUTHORITY: §§1-3, NRS 360.090, 360.535; §§4-11, NRS 360.090, 360.2915.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. 1. *To claim an ownership interest in property transmitted to or seized by the department pursuant to NRS 360.530, a person who does not owe any tax to the department must file a written claim with the department at least 3 days before the date set for the sale of the property.*

2. A written claim filed pursuant to subsection 1 must be executed under oath by the person claiming the ownership interest and must contain:

- (a) The name of the person filing the claim;*
- (b) An address in this state where the person may be served by mail;*
- (c) A description of the property in which the person claims an interest;*
- (d) A description of the interest claimed; and*
- (e) A statement that sets forth the facts upon which the person bases his claim.*

FLUSH *The person may attach to the written claim any documents that support the claim.*

3. If a claim is filed pursuant to this section, the department shall not conduct a sale of the property to which the claim pertains until a final decision has been issued pursuant to section 3 of this regulation.

Sec. 3. 1. A hearing officer shall conduct an administrative hearing after the department receives a claim filed pursuant to section 2 of this regulation to determine ownership of the property to which the claim pertains.

2. Except as otherwise provided in subsection 3, the hearing officer shall conduct an administrative hearing pursuant to this section within 15 days after the department receives a claim filed pursuant to section 2 of this regulation. The hearing officer may continue such a hearing for good cause shown.

3. An administrative hearing may be conducted pursuant to this section on the date on which the property to which the claim pertains is seized or transmitted to the department if, on that date:

(a) The ownership of the property can be established to the satisfaction of the hearing officer with information obtained by the department; or

(b) The person who is claiming the ownership interest can provide the information and documentation required by subsection 2 of section 2 of this regulation.

4. Except for a hearing held pursuant to subsection 3, notice of an administrative hearing conducted pursuant to this section must be served by mail at least 10 days before the date of the hearing to any person claiming an interest in the property, including, without limitation, the person who transmitted the property to the department or from whom the property was seized.

5. Notice of a hearing served pursuant to subsection 4 must specify:

(a) The purpose of the hearing; and

(b) The date, time and location of the hearing.

6. Except as otherwise provided in subsections 4, 7 and 8, a hearing held pursuant to this section must be conducted in accordance with the procedures for a hearing on a petition for redetermination set forth in NAC 360.095 to 360.170, inclusive.

7. A person who files a claim pursuant to section 2 of this regulation has the burden of proof at the hearing held pursuant to this section. The hearing officer shall determine the manner in which evidence will be received.

8. After a hearing held pursuant to this section, the hearing officer shall prepare written findings of fact, conclusions of law and his decision on the issues presented at the hearing. The hearing officer shall serve a copy of his findings of fact, conclusions of law and decision upon any person who claims an ownership interest in the property, including, without limitation, the person who transmitted the property to the department or from whom the property was seized, within 20 days after the date of the hearing.

9. Within 30 days after service of the copy of the findings of fact, conclusions of law and decision of the hearing officer pursuant to subsection 8, any person to whom the findings of fact, conclusions of law and decision were served may file a notice of appeal with the commission. An appeal of the decision of a hearing officer must be made in writing and a hearing on the appeal will be conducted in accordance with the applicable rules set forth in NAC 360.175, 360.176 and 360.185.

Sec. 4. 1. Except as otherwise provided in section 7 of this regulation and subject to the approval of the director or his designee, the department may enter into an agreement with a

taxpayer, upon the request of the taxpayer, that allows the taxpayer to pay taxes, interest and penalties in installments over a period of 12 months or less if:

(a) The taxpayer submits accurate and complete information that the department requires to determine whether to enter the agreement;

(b) The taxpayer agrees in writing that he will comply with all the provisions of the laws and regulations of the commission during the period in which the agreement is in effect, including, without limitation, reporting and payment requirements;

(c) The department determines that as of the date on which the taxpayer requested to enter into the agreement, the taxpayer is unable to pay the entire amount of taxes, interest and penalties due for financial reasons; and

(d) The amount owed by the taxpayer on the date on which he requested to enter into the agreement does not exceed the amount set by the commission pursuant to section 6 of this regulation.

2. The department may deny a request to enter into an agreement pursuant to subsection 1 if the taxpayer has not complied with a previous agreement with the department to pay taxes, interest and penalties in installments.

Sec. 5. 1. An agreement to pay taxes, interest and penalties in installments pursuant to section 4 or 7 of this regulation must:

(a) Be in writing.

(b) Except as otherwise provided in this paragraph, contain a personal guaranty by two responsible persons in their individual capacities. If there is only one responsible person, the agreement must contain the personal guaranty of that person in his individual capacity.

(c) Be accompanied by the initial payment required by the terms of the agreement.

2. As used in this section, “responsible person” has the meaning ascribed to it in subsection 2 of NRS 372.398.

Sec. 6. The commission will determine the maximum amount of tax liability that a taxpayer may have to enter into an agreement with the department to pay taxes, interest and penalties in installments pursuant to section 4 or 7 of this regulation.

Sec. 7. 1. As used in this section, “good cause” includes, without limitation, circumstances that would prevent a taxpayer from paying the taxes, interest and penalties in a period of less than 12 months.

2. The director may, for good cause shown, authorize the department to enter into an agreement upon the request of a taxpayer that allows the taxpayer to pay taxes, interest and penalties in installments over a period of more than 12 months if, in addition to satisfying the requirements set forth in section 4 of this regulation, the taxpayer provides security in a form set forth in subsection 4 that has been verified by the department.

3. If the department receives a request for an agreement pursuant to this section from a taxpayer who is unable to provide the security required pursuant to subsection 2, the department shall review the request and transmit the request and the recommendation of the department regarding the request to the commission. The commission may authorize the department to enter into an agreement pursuant to this section with such a taxpayer.

4. The department will accept as security pursuant to this section only:

(a) Cash;

(b) Time certificates or certificates of deposit that are issued or confirmed by a bank, savings bank or savings and loan association situated in this state;

(c) Passbook savings accounts located in a bank, savings bank or savings and loan association situated in this state;

(d) Surety bonds executed by an insurance company pursuant to NRS 100.065;

(e) Bearer bonds issued by the United States, except savings bonds;

(f) Liens upon real property created by a recorded instrument that vests the lien in the State of Nevada;

(g) Irrevocable letters of credit that are issued or confirmed by a bank, savings bank or savings and loan association situated in this state upon conditions prescribed by the department; or

(h) A perfected, first priority security interest created pursuant to the provisions of NRS 104.9101 to 104.9628, inclusive, which is in personal property located in this state and which designates the State of Nevada as the secured party.

Sec. 8. *If the department receives a request for an agreement pursuant to section 4 or 7 of this regulation from a taxpayer whose tax liability exceeds the amount set by the commission pursuant to section 6 of this regulation, the department shall review the request and transmit the request and the recommendation of the department regarding the request to the commission. The commission may authorize the department to enter into an agreement with such a taxpayer pursuant to section 4 or 7 of this regulation.*

Sec. 9. 1. *The department may terminate an agreement entered into pursuant to section 4 or 7 of this regulation if the department determines:*

(a) The taxpayer has not complied with the terms of the agreement;

(b) The taxpayer provided to the department incomplete or inaccurate information on which the department based its determination to enter the agreement; or

(c) The financial conditions of the taxpayer have changed such that the taxpayer has the ability to pay the full amount of taxes, interest and penalties owed.

2. Except as otherwise provided in subsection 3, if the department determines to terminate an agreement pursuant to subsection 1, the department shall provide the taxpayer with a notice of its intention to terminate the agreement at least 10 days before the date on which the department intends to terminate the agreement. The notice must contain an explanation of the decision of the department to terminate the agreement.

3. The department is not required to provide notice of its intention to terminate an agreement entered into pursuant to section 4 or 7 of this regulation if:

(a) The department determines that the collection of a tax pursuant to the agreement is in jeopardy pursuant to NRS 360.412; or

(b) Mutual consent to terminate, alter or modify the agreement exists between the department and the taxpayer.

4. If an agreement is terminated pursuant to this section, the total amount covered by the agreement, including, without limitation, tax, interest and penalties, is due on the date on which the agreement terminates.

5. Except as otherwise provided in this subsection, an appeal of a decision to terminate an agreement must be filed in writing with the department within 30 days after the date on which the agreement terminates. An appeal of a decision to terminate an agreement for which the department determined that the collection of the tax was in jeopardy pursuant to paragraph (a) of subsection 3 must be filed in writing with the department within 10 days after the agreement terminates.

6. A hearing officer shall conduct a hearing on an appeal pursuant to this section in the same manner set forth in NAC 360.095 to 360.170, inclusive, for a hearing on a petition for redetermination.

7. If a taxpayer does not file an appeal after receiving a notice of termination of the agreement, the decision of the department is final and the department may take any action authorized by law to collect the amount covered by the agreement, including, without limitation, tax, interest and penalties.

Sec. 10. *The provisions of sections 4 to 11, inclusive, of this regulation, do not:*

1. Apply to a bankruptcy plan that has been confirmed pursuant to the provisions of 11 U.S.C. §§ 1121 to 1146, inclusive; or

2. Limit the ability of a taxpayer to make installment payments pursuant to NRS 361.483.

Sec. 11. *The commission may review and deny or approve any agreement entered into by the department pursuant to section 4 or 7 of this regulation.*