

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R079-01

Effective September 20, 2002

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

AUTHORITY: §§1-6, NRS 360.090.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. 1. *If a taxpayer fails to file a return as required by the applicable provisions of chapter 360, 362, 364A, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS and he wishes to disclose that fact voluntarily to the commission, the taxpayer or his representative must file with the department an application for voluntary disclosure on a form prescribed by the commission before the department has initiated an audit or investigation of the taxpayer.*

2. The commission will not accept an application filed pursuant to subsection 1 until the application has been approved and signed by the director. The director shall not approve and sign the application until he has verified that the department did not initiate an audit or investigation of the taxpayer before the date that the taxpayer filed an application with the department pursuant to subsection 1. An application is deemed to be filed with the department on the date the application is received by the department.

3. After the director has signed and approved the application, the commission will provide the taxpayer with a copy of the approved application.

4. For the purposes of subsection 2, the department has initiated an audit or investigation of a taxpayer if the department has:

(a) Contacted the taxpayer by telephone, in person or in writing regarding a possible tax liability; or

(b) Given the taxpayer written notice that an audit will be conducted by the department concerning liability for the type of tax that the taxpayer wishes to disclose voluntarily pursuant to this section.

Sec. 3. Within 90 days after a taxpayer has received a copy of an application approved pursuant to section 2 of this regulation, the taxpayer must:

1. File with the department the delinquent tax returns for the tax owed for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date the application was filed pursuant to section 2 of this regulation;

2. Pay any tax owed for the period described in subsection 1; and

3. Submit documentation to the department of the methodology the taxpayer used to determine his tax liability.

Sec. 4. The commission will not consider the tax liability of a taxpayer as being voluntarily disclosed if, after filing an application for voluntary disclosure pursuant to section 2 of this regulation, the taxpayer:

1. Within 90 days after the taxpayer has received a copy of the approved application, fails to file with the department the delinquent tax returns for the tax owed for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date the application was filed pursuant to section 2 of this regulation;

2. *Within 90 days after the taxpayer has received a copy of the approved application, fails to pay any tax owed for the period described in subsection 1;*

3. *Fails to make a good faith effort to comply with the applicable provisions of chapter 360, 362, 364A, 369, 370, 372, 372A, 374, 377, 377A, or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS, including, without limitation, registering with the department, filing tax returns, paying any tax liability and remitting any taxes collected; or*

4. *Fails to provide an accurate estimate of his tax liability in the application for voluntary disclosure filed pursuant to section 2 of this regulation. The taxpayer shall be deemed to have provided an inaccurate estimate of his tax liability if:*

(a) *The tax liability provided in the application for voluntary disclosure is less than the taxpayer's actual tax liability by 10 percent or more; and*

(b) *The taxpayer is unable to demonstrate to the department that he made a good faith effort to report accurately his tax liability in the application for voluntary disclosure.*

Sec. 5. 1. *If the commission determines that the taxpayer has made a good faith effort in complying with the requirements set forth in section 4 of this regulation, the department shall not assess the penalty and interest set forth in NRS 360.300 on the entire amount of the tax liability.*

2. *If the commission does not consider the tax liability of a taxpayer to be voluntarily disclosed pursuant to section 4 of this regulation, the department shall assess the penalty and interest set forth in NRS 360.300 on the entire amount of the tax liability.*

3. *A taxpayer who wishes to dispute the amount of any penalty or interest assessed by the department pursuant to subsection 1 or 2 must file a written petition with the director within*

45 days after the taxpayer receives a bill from the department for that amount. The petition must set forth any information that supports the dispute.

4. The commission will review any petition filed with the director pursuant to subsection 3 and determine the amount of any tax, penalty or interest owed by the taxpayer. The commission will notify the taxpayer of its decision by registered or certified mail, return receipt requested.

5. The taxpayer must file any additional returns and pay the amount of any tax, penalty or interest that the commission determines is owed by the taxpayer pursuant to subsection 4 within 60 days after he receives the notification from the commission pursuant to subsection 4.

Sec. 6. *The department retains the right to:*

1. Audit a taxpayer for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date the application was filed pursuant to section 2 of this regulation; and

2. Assess any tax, penalty and interest that is owed by the taxpayer.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R079-01

The Nevada Tax Commission adopted regulations assigned LCB File No. R079-01 which pertain to chapter 360 of the Nevada Administrative Code on August 5, 2002.

Notice date: 7/5/2002
Hearing date: 8/5/2002

Date of adoption by agency: 8/5/2002
Filing date: 9/20/2002

INFORMATIONAL STATEMENT

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 August 5, 2002 at the Washoe County Health Department, South Conference Room, 1001 East 9' 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 minor revisions on October 30, 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: 2**
- (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 240 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.

Section 2, paragraphs 2 (a) & (b); Section 3, paragraphs 1, 2 & 3; Section 4, paragraphs 1, 2, 3, 4 & 5; Deleting Section 5 in its entirety; Creating a new Section 5; and Creating a new Section 6 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. Those amendments were necessary in order for the regulation to flow from a timing and administrative procedural standpoint. The remaining sections 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 taxpayers who voluntarily come forward to disclose a debt owed to the State of Nevada. Those anticipated benefits are not quantifiable at this time, but would include the potential abatement of penalties and 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 significant foreseeable or anticipated cost for enforcement. There may be some minor administrative costs for the Department, which are not quantifiable at this time.

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 state sales/use and excise 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.