

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R109-01**

September 4, 2001

(R109-01 was created using parts of R050-01.)

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

AUTHORITY: §§1-13, NRS 360.750, 361.0685, 361.0687, 364A.170 and 374.357.

**Section 1.** Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

**Sec. 2.** *“Commission” means the commission on economic development.*

**Sec. 3.** *“Eligible machinery or equipment” has the meaning ascribed to it in NRS 374.357.*

**Sec. 4.** *“Partial abatement” means the reduction of a portion of the taxes imposed pursuant to chapter 361, 364A or 374 of NRS, or any combination thereof, which is authorized by NRS 360.750.*

**Sec. 5.** *A partial abatement of the taxes imposed pursuant to chapter 364A of NRS that is approved by the commission for an expanded business:*

*1. Applies only to the taxes due for the additional employees employed by the business as a result of the expansion of the business.*

*2. Does not apply to the taxes due for the employees that were employed by the business before the expansion.*

*Sec. 6. 1. For the purposes of NRS 360.225, to determine eligibility for a partial abatement of the taxes imposed pursuant to chapter 364A of NRS, a proposed or expanded business which qualifies as an employer pursuant to NRS 612.055 shall be deemed by the department to have begun operations in this state:*

*(a) If the business is a proposed business, on the date on which the business first pays wages to an employee of the business who performs services for the business in this state.*

*(b) If the business is an expanded business, on the date on which the business first pays wages to an employee of the business who was not employed by the business before the expansion.*

*2. To determine the amount of capital investment required pursuant to subparagraph (2) of paragraph (d), (e) or (f) of subsection 2 of NRS 360.750 for a partial abatement of the taxes imposed pursuant to chapter 364A of NRS:*

*(a) A capital investment shall be deemed to be any expenditure for an asset that qualifies as a capital expenditure pursuant to the Internal Revenue Code of 1986, as amended, if the asset will be used by the proposed business to establish its operations in this state or by the expanded business to expand its operations in this state.*

*(b) The amount paid for such an asset, including any capitalized interest, shall be deemed to be the amount of the capital investment for that asset. Any finance charge, tax or interest paid for the asset must not be included in the determination of the amount of the capital investment for that asset.*

*3. A business for which the commission has approved a partial abatement of the taxes imposed pursuant to chapter 364A of NRS shall, not later than 30 days after the end of the first fourth quarter in which the business has been in operation after the approval of the*

*partial abatement, file with the department on a form prescribed by the department, a statement that the business has complied with the requirements of NRS 360.750. The form must be accompanied by proof that the business has made the capital investment required by NRS 360.750.*

**Sec. 7. 1.** *The department shall, pursuant to NRS 360.225, determine if machinery or equipment for which a business claims a partial abatement of the taxes imposed pursuant to chapter 374 of NRS qualifies as eligible machinery or equipment pursuant to NRS 374.357.*

*2. The department shall not determine that machinery or equipment which is leased by a business qualifies for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS.*

**Sec. 8.** *If the commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 364A or 374 of NRS, the applicant must employ the number of employees required by the commission for approval of the application by the last day of the first fourth quarter that the applicant has been in operation after the partial abatement has been approved by the commission and must continue to employ at least that number of employees for:*

*1. At least 5 years; or*

*2. The period specified in the agreement executed by the applicant with the commission pursuant to paragraph (b) of subsection 2 of NRS 360.750, whichever is later, after the last day of that fourth quarter.*

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**Sec. 9.** *If an application is approved by the commission for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the period of abatement begins on the date on which the applicant takes possession of the first delivery of eligible machinery or equipment at*

*the location designated in the certificate of eligibility issued by the commission. Upon so taking possession of such eligible machinery or equipment, the applicant shall immediately notify the commission and the Nevada tax commission.*

**Sec. 10. 1.** *If the commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 361 or 364A of NRS, the applicant is eligible for a refund of any taxes imposed pursuant to chapter 361 or 364A of NRS which were paid previously by the applicant and which are subject to the abatement.*

*2. If the commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS and the department determines pursuant to section 7 of this regulation that the machinery or equipment qualifies as eligible machinery or equipment, the applicant is eligible for a refund of any taxes imposed pursuant to chapter 374 of NRS which were paid previously by the applicant and which are subject to the abatement.*

**Sec. 11.** *If a business for which the commission has approved an application for a partial abatement of the taxes imposed pursuant to chapter 364A or 374 of NRS fails to continue to meet the requirements for the partial abatement set forth in NRS 360.750, the department shall determine the amount of tax owed to the department in the manner prescribed in NRS 360.300 to 360.400, inclusive.*

**Sec. 12. 1.** *Each business for which the commission has approved an application for a partial abatement of the taxes imposed pursuant to chapter 364A or 374 of NRS shall deposit with the department security in an amount equal to the amount of the partial abatement within 30 days after the date on which the partial abatement was approved.*

*2. The department shall accept as the security required pursuant to subsection 1 only:*

*(a) The types of security set forth in subsection 4 of NAC 372.825; or*

*(b) 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.*

*3. The business shall maintain in effect the security required pursuant to this section for:*

*(a) At least 5 years; or*

*(b) The period specified in the agreement executed by the applicant with the commission pursuant to paragraph (b) of subsection 2 of NRS 360.750, whichever is later, after the date on which the commission has approved the partial abatement.*

*4. The department shall release the security deposited by a business pursuant to this section to the business within 30 days after the expiration of the period specified in subsection*

*3.*

**Sec. 13.** NAC 361.093, 364A.152, 374.100, 374.105, 374.110, 374.115 and 374.120 are hereby repealed.

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## TEXT OF REPEALED SECTIONS

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**361.093 Application: Form required; consideration by commission. (NRS 360.750, 361.0687)**

1. A person seeking a partial abatement from property taxes on the personal property of a new or expanded business pursuant to NRS 361.0687 must apply for the abatement on the form

prescribed by the commission not more than 1 year before the business begins to develop the site for its expansion or operation in this state.

2. The commission will deny or approve each application for a partial abatement at the first regularly scheduled meeting following receipt of the application if the application is received at least 15 working days before the meeting. An application that is received within that time will be considered at the next regularly scheduled meeting of the commission following the one before which it was received.

3. As used in this section, “commission” means the commission on economic development.

**364A.152 Exemption for proposed business: Determination of eligibility; determination of capital investment required.**

1. To determine eligibility for the exemption authorized by NRS 364A.170, a proposed business which qualifies as an employer pursuant to NRS 612.055 shall be deemed to have begun operations in this state on the date it first pays wages to an employee of the business who performs services for the business in this state.

2. To determine the amount of capital investment required pursuant to subparagraph (2) of paragraph (a) or (b) of subsection 2 of NRS 364A.170:

(a) A capital investment shall be deemed to be any expenditure for an asset that qualifies as a capital expenditure pursuant to the Internal Revenue Code of 1986, as amended, if the asset will be used by the proposed business to establish its operations in this state.

(b) The amount paid for such an asset, including any capitalized interest, shall be deemed to be the amount of the capital investment for that asset. Any finance charge, tax or

interest paid for the asset must not be included in the determination of the amount of the capital investment for that asset.

3. A proposed business shall, not later than 30 days after the end of the fourth quarter in which the business is in operation, file with the department on a form prescribed by the department, a statement that the business has complied with the requirements of NRS 364A.170. The form must be accompanied by proof that the business has made the capital investment required by NRS 364A.170.

4. If a proposed business fails to qualify for the exemption authorized by NRS 364A.170, the department shall determine the amount of tax owed to the department in the manner prescribed in NRS 360.300 to 360.400, inclusive.

**374.100 Definitions. (NRS 360.750)** As used in NAC 374.100 to 374.120, inclusive, unless the context otherwise requires:

1. “Abatement” means the abatement of the taxes imposed by chapter 374 of NRS which is authorized by NRS 374.357.

2. “Commission” means the commission on economic development.

3. “Eligible machinery or equipment” has the meaning ascribed to it in NRS 374.357.

**374.105 Commencement of period of abatement; notification of date. (NRS 360.750)** If an application is approved by the commission, the period of abatement begins on the date the applicant takes possession of the first delivery of eligible machinery or equipment at the location designated in the certificate of eligibility issued by the commission. Upon so taking possession of such eligible machinery or equipment, the applicant shall immediately notify the commission and the Nevada tax commission.

**374.110 Application for abatement: Certain requirements based on location and status of retailer; refund of taxes paid; determination as eligible machinery or equipment. (NRS 360.750)**

1. An application for an abatement of taxes on the acquisition of eligible machinery or equipment outside this state from a retailer who is not registered with the Nevada tax commission must be made in advance of the acquisition or, if the eligible machinery or equipment has already been acquired, within 60 days after the date on which the tax was due.

2. An application for an abatement of taxes on the acquisition of eligible machinery or equipment from a retailer registered with the Nevada tax commission must be made within 60 days after the payment of the tax.

3. If an application for an abatement is approved by the commission, the applicant is eligible for a refund of any taxes he paid which are subject to the abatement.

4. The department of taxation may determine if the machinery or equipment purchased by the business qualifies as eligible machinery or equipment pursuant to NRS 374.357.

**374.115 Review of certain records by commission.** As a condition of approval by the commission of an application for an abatement, the applicant must grant in writing to the commission the right to review employment records, permits and other documents which the commission determines are necessary to verify the eligibility of the applicant for the abatement.

**374.120 Consideration and approval of application.**

1. The commission will approve or deny at its next regularly scheduled meeting each application for an abatement which is received by the commission at least 15 working days before the meeting.

2. The commission will consider each application on a case-by-case basis.