

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R161-04

Effective December 15, 2004

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

AUTHORITY: §1, NRS 360.90, 360.765, 360.770, 360.780 and 360.785; §2, NRS 360.090 and 360.780.

A REGULATION relating to taxation; providing interpretations of certain statutory terms needed to administer the business license fee; clarifying that such fees will not be prorated; and providing other matters properly relating thereto.

Section 1. NAC 360.760 is hereby amended to read as follows:

360.760 For the purposes of NRS 360.760 to 360.795, inclusive, and NAC 360.750 to 360.770, inclusive, the Commission interprets the term:

1. *“Activities of a natural person:”*

(a) To include, without limitation, any activity of a natural person if that activity is conducted in furtherance of the business of:

(1) A limited-liability company which is disregarded, for the purposes of federal income taxation, as an entity separate from its owner; and

(2) A trust or any portion thereof if the natural person is a substantial owner of the trust or any portion thereof in accordance with the provisions of 26 U.S.C. §§ 671 to 679, inclusive.

(b) To exclude any activity of a natural person if any income, tax deductions or tax credits attributable to that activity may be reported to the Internal Revenue Service as income or loss from a partnership, S corporation, estate, trust or real estate mortgage investment conduit on

Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form.

2. “Business trust” to ~~[exclude any trust or portion thereof for which any income, tax deductions or tax credits are attributable to a grantor or another person as a substantial owner of the trust or portion pursuant to the provisions of 26 U.S.C. §§ 671 to 679, inclusive.~~

~~—2.]~~ *mean a business trust organized pursuant to the provisions of chapter 88A of NRS or an equivalent entity organized pursuant to the laws of any other jurisdiction.*

3. “Convention” to mean an event of limited duration primarily attended by members of a particular trade or industry to discuss matters of interest to members of that trade or industry.

~~[3.]~~ 4. “Limited-liability company” to exclude any limited-liability company which consists of a single member if the limited-liability company is disregarded, for the purposes of federal income taxation, as an entity separate from its owner.

~~[4.—“Natural person” to include, without limitation:~~

~~—(a) A natural person who is the single member of a limited liability company which is disregarded, for the purposes of federal income taxation, as an entity separate from its owner;~~

~~—(b) A natural person who is regarded as a substantial owner of any trust or portion thereof pursuant to the provisions of 26 U.S.C. §§ 671 to 679, inclusive;~~

~~—(c) A married couple who jointly report, on one or more of the forms described in NRS 360.785, any income, tax deductions or tax credits attributable to a business which is jointly operated by that couple; and~~

~~—(d) A married person who reports, either individually or jointly with his spouse, on one or more of the forms described in NRS 360.785, any income, tax deductions or tax credits attributable to a business which is individually operated by that person.]~~

5. *“Partnership” to include any association of two or more persons described in NRS 87.060, regardless of whether the partnership reports to the Internal Revenue Service partnership income, tax deductions or tax credits on Form 1065, U.S. Return of Partnership Income, or its equivalent or successor form.*

6. *“Person that conducts an activity for profit” to exclude:*

(a) *Any trust or portion thereof for which any income, tax deductions or tax credits are attributable to a grantor or another person as a substantial owner of the trust or portion thereof pursuant to the provisions of 26 U.S.C. §§ 671 to 679, inclusive;*

(b) *Any trust or portion thereof not otherwise described in this section if the only activity conducted by the trust or portion thereof is of a type that would not qualify as a business pursuant to NRS 360.785 if it were conducted by a natural person; and*

(c) *Any estate if the only activity conducted by the estate is of a type that would not qualify as a business pursuant to NRS 360.785 if it were conducted by a natural person.*

7. “Person who operates a business from his home” to mean a natural person who *individually* operates *or a married couple who jointly operate* a business from ~~[his]~~ a personal residence ~~[and who:~~

~~—(a) Does not hold any] if:~~

(a) *No* part of ~~[his]~~ *the* personal residence *is held* open to the general public for use in furtherance of that business; and

(b) ~~[Does not own, lease, rent or license any]~~ *No* real property *is owned, leased, rented or licensed by the natural person or the married couple* for use in furtherance of that business, other than ~~[his]~~ *the* personal residence and any real property ~~[he owns, leases, rents or licenses]~~ *owned, leased, rented or licensed* for the sole purpose of:

- (I) Maintaining a post office box;
- (II) Posting a business license in accordance with the requirements of a municipal or county ordinance; or
- (III) Periodically exhibiting or selling goods or services at a temporary fair, market, show or exhibition.

~~{6.}~~ 8. “Trade show” to mean an event of limited duration primarily attended by members of a particular trade or industry to exhibit their merchandise or services to other members of that trade or industry.

Sec. 2. NAC 360.770 is hereby amended to read as follows:

360.770 The *Department will not prorate the* fees required by NRS 360.780 ~~{are nonrefundable.}~~ *for any portion of a year during which a business is not conducted in this State.*

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R161-04

The Department of Taxation adopted regulations assigned LCB File No. R161-04 which pertain to chapter 360 of the Nevada Administrative Code on December 6, 2004.

Notice date: 11/3/2004
Hearing date: 12/6/2004

Date of adoption by agency: 12/6/2004
Filing date: 12/15/2004

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; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, 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, 2550 Paseo Verde Parkway, Suite 180, Henderson, 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 December 6, 2004 via video conference between the Nevada Department of Transportation at 310 Galletti Way, Reno, Nevada, and 123 East Washington Avenue, Building B, Training Room A, Las Vegas, 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 (775) 684-2096 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 November 3, 2004. 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: 51

(b) Testified at the hearing: 2

(c) Submitted to the Tax Commission written comments: Written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission by Mr. David Turner - a member of the Tax Commission and by Jones Vargas a law firm located in Reno, Nevada.

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.

The proposed regulation was not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation, Attorney General's Office or Tax Commission members, and the Tax Commission believed no changes 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 those estates and trusts that are now not subject to the state's business license requirement. Those anticipated benefits are not quantifiable at this time.

(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 initial 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 business license 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.