

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R018-05

August 1, 2005

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

AUTHORITY: §§1 and 2; NRS 360.090, 360.093 and 360.419.

A REGULATION relating to taxation; revising the provisions relating to a waiver of penalty or interest for the late payment of a tax return or deficiency; and providing other matters properly relating thereto.

Section 1. NAC 360.400 is hereby amended to read as follows:

360.400 1. ~~[Except as otherwise provided in subsection 7, the Department may waive or reduce the penalty or interest for a deficiency for which a notice of a deficiency determination has been issued by the Department pursuant to NRS 360.350, if the Department finds that the deficiency was caused by circumstances beyond the control of the taxpayer against whom the deficiency determination was made or his agent and occurred despite the exercise of ordinary care and without intent.~~

~~—2.—~~ ~~Such a]~~ A taxpayer or his agent may request a waiver or reduction of the penalty or interest for ~~[the]~~ *a* deficiency *for which a notice has been served by the Department pursuant to NRS 360.350* by filing a statement with the Department that contains the facts underlying the circumstances that caused the deficiency. The Department shall treat such a statement in the same manner provided in chapter 360 of NRS for a petition for redetermination. Except as otherwise provided in this subsection, the statement must be filed in writing with the Department within ~~[45]~~ *90* days after the date on which the taxpayer is served with a notice of a deficiency

determination for the deficiency pursuant to NRS 360.350. If the notice of the deficiency determination is served by mail, the period for filing a statement pursuant to this subsection will be extended by 3 days. The statement must be witnessed by a notary public or contain an acknowledgment that it is signed under penalty of perjury.

~~[3.]~~ 2. If a taxpayer has filed a petition for redetermination, he may request in writing a waiver or reduction of the penalty or interest on the deficiency any time before a final decision is issued on the petition for redetermination.

~~[4.]~~ 3. *Except as otherwise provided in subsection 8, if a taxpayer has made a payment of a deficiency for which a notice of a deficiency determination has been served or mailed pursuant to NRS 360.355 and has requested a waiver of the penalty or interest for the deficiency pursuant to subsection 1 or 2:*

(a) The Department shall waive the penalty or interest for the deficiency if:

(1) The total penalty and interest for the deficiency is \$5 or less; or

(2) The deficiency:

(I) Is the only deficiency for that same type of tax that the taxpayer has submitted in the 12 months immediately preceding the due date of the deficiency, or in the 24 months immediately preceding the due date of the deficiency if the tax was imposed pursuant to chapter 362 of NRS;

(II) Was received by the Department within 90 days after the date on which the payment was due; and

(III) Is determined by the Department to have been caused by circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

(b) The Department shall reduce the penalty or interest on the deficiency by the amount set forth in subsection 4 if:

(1) The taxpayer had only one other deficiency for the same tax during the 12 months immediately preceding the due date of the deficiency or during the 24 months immediately preceding the due date of the deficiency if the tax was imposed pursuant to chapter 362 of NRS; and

(2) The Department determines that the most recent deficiency was made as a result of circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

(c) The Department may waive the penalty or interest on the deficiency if the Department determines that the deficiency was made as a result of circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

4. If the Department must reduce the penalty or interest on a deficiency pursuant to paragraph (b) of subsection 3, the penalty assessment for the deficiency must not be more than:

(a) Two percent of the tax if the payment is not more than 2 days late.

(b) Four percent of the tax if the payment is not more than 5 days late.

(c) Six percent of the tax if the payment is not more than 10 days late.

(d) Eight percent of the tax if the payment is not more than 15 days late.

5. In determining, for the purposes of subsection ~~H,~~ 3, whether or not the circumstances which caused the deficiency were beyond the control of the taxpayer against whom the deficiency determination was made or his agent and occurred despite the exercise of ordinary care and without intent, the Department shall consider ~~[the provisions of NAC 360.470 and]~~ any

evidence which shows that the deficiency was caused by circumstances that were not directly related to the actions of the taxpayer or his agent, including, without limitation, fire, earthquake, flood or other acts of God, theft, the death or serious illness of the taxpayer or his agent or a member of the immediate family of the taxpayer, erroneous written information provided to the taxpayer or his agent by the Department and the misaddressed but timely mailing of the return or payment. The existence of an event described in this subsection does not create a conclusive presumption of eligibility for a waiver or reduction of the penalty or interest on a deficiency pursuant to this section.

~~{5}~~ 6. If the assessment of a tax is accompanied by the assessment of a penalty based upon negligence, fraud or intent to evade the tax pursuant to NRS 360.330 or 360.340, the Department shall not consider a request to waive or reduce the penalty or interest on the deficiency pursuant to this section unless the Department determines that there is insufficient evidence to show negligence, fraud or intent to evade the tax.

~~{6}~~ 7. If the Department denies a request by a taxpayer for a waiver or reduction of a penalty or interest on a deficiency pursuant to this section, the taxpayer may appeal the decision by filing a written notice of appeal with the Department within 30 days after the taxpayer has been served with the decision of the Department denying the request. Upon receipt of such a notice of appeal, the Department shall schedule a hearing for the appeal. The taxpayer must be given 10 days' notice of the time and place of the hearing. The procedures set forth in chapter 360 of NRS for a hearing on a petition for redetermination apply to a hearing on an appeal of the denial of a request for a waiver or reduction of a penalty or interest on a deficiency.

~~{7}~~ 8. The provisions of this section do not apply to a taxpayer who has entered into a settlement agreement with the Department that has been approved by the Commission.

Sec. 2. NAC 360.402 is hereby amended to read as follows:

360.402 1. Except as otherwise provided in subsection 4, if a taxpayer has made a late payment on a monthly, quarterly or annual return that he filed with the Department for a tax imposed pursuant to chapter ~~[361A,]~~ 362, 363A, 363B, 368A, 369, 370, 372, 372A, 374, 375A, 375B, 376A, 377 or 377A of NRS and the Department has not issued a notice of a deficiency determination pursuant to NRS 360.350 relating to that return:

(a) The Department shall waive the penalty and interest for the late payment if:

(1) The total penalty and interest for the late payment is \$5 or less; or

(2) The late payment:

(I) Is the only late payment for that tax that the taxpayer has submitted in the 12 months immediately preceding the period for which the late payment was made if the tax was imposed pursuant to chapter ~~[361A,]~~ 363A, 363B, 368A, 369, 370, 372, 372A, 374, 375A, 375B, 376A, 377 or 377A of NRS, or in the 24 months immediately preceding the period for which the late payment was made if the tax was imposed pursuant to chapter 362 of NRS;

(II) Was received by the Department within ~~[45]~~ 90 days after the date on which the payment was due; and

(III) Is determined by the Department to have been caused by circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

(b) The Department shall reduce the penalty and interest on the late payment by the amount set forth in subsection 2 if:

(1) The taxpayer had made only one other late payment for the same tax during the 12 months immediately preceding the period for which the most recent late payment was made if

the tax was imposed pursuant to chapter ~~[361A,]~~ 363A, 363B, 368A, 369, 370, 372, 372A, 374, 375A, 375B, 376A, 377 or 377A of NRS, or during the 24 months immediately preceding the period for which the most recent late payment was made if the tax was imposed pursuant to chapter 362 of NRS; and

(2) The Department determines that the most recent late payment was made as a result of circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

(c) The Department may waive the penalty and interest on the late payment if the Department determines that the late payment was made as a result of circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent.

2. If the Department must reduce the penalty and interest on a late payment pursuant to paragraph (b) of subsection 1:

(a) The penalty assessment for the late payment will be not more than:

(1) Two percent of the tax if the payment is not more than 2 days late.

(2) Four percent of the tax if the payment is not more than 5 days late.

(3) Six percent of the tax if the payment is not more than 10 days late.

(4) Eight percent of the tax if the payment is not more than 15 days late.

(b) The interest on the late payment will be reduced by the rate of reduction of the penalty applied by the Department pursuant to paragraph (a).

3. In determining, for the purposes of subsection 1, whether or not the circumstances which caused the late payment were beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent, the Department shall consider ~~[the provisions of NAC 360.470 and]~~ any evidence which shows that the late payment was caused by

circumstances that were not directly related to the actions of the taxpayer or his agent, including, without limitation, fire, earthquake, flood or other acts of God, theft, the death or serious illness of the taxpayer or his agent or a member of the immediate family of the taxpayer, an error or the misconduct of an employee of the taxpayer, erroneous written information provided to the taxpayer or his agent by the Department and the misaddressed but timely mailing of the return or payment. The existence of an event described in this subsection does not create a conclusive presumption of eligibility for a waiver or reduction of the penalty or interest on a late payment pursuant to this section.

4. The provisions of this section do not apply to a taxpayer who has entered into a settlement agreement with the Department that has been approved by the Commission.