

**PROPOSED REGULATION OF THE
DEPARTMENT OF MOTOR VEHICLES**

LCB File No. R101-05

September 19, 2005

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

AUTHORITY: §§1-12 and 15-17, NRS 360A.020; §§13 and 14, NRS 360A.080; §§18-21, NRS 366.110.

A REGULATION relating to taxation of fuels; establishing the amount of notice required before the Department of Motor Vehicles may lock or seal the business of a person who has committed certain violations; providing that a payment to the Department that is dishonored upon presentation for payment will be deemed to have been timely received if it was dishonored as the result of the fault or error of a financial institution; providing for the waiver of penalties and interest on delinquent payments of taxes and fees under certain circumstances; establishing requirements for taxpayers who wish to enter into agreements with the Department to make installment payments; providing procedures for petitioning the Department for a redetermination of a deficiency determination; making various changes concerning the taxation of special fuels; and providing other matters properly relating thereto.

Section 1. Chapter 360A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Deficiency determination” means the amount of any tax, fee, penalty or interest that the Department determines is delinquent pursuant to NRS 360A.100 to 360A.220, inclusive.*

Sec. 4. *“Department” means the Department of Motor Vehicles.*

Sec. 5. *“Director” means the Director of the Department.*

Sec. 6. *“Good cause” means a circumstance that is beyond the control of a taxpayer and occurs despite his exercise of ordinary care and without willful neglect. The term includes, without limitation:*

- 1. A fire, earthquake, flood or other act of God;*
- 2. Theft; or*
- 3. The death or serious illness of the taxpayer, a member of his family or his agent whose job or duty it is to collect, account for, or pay to the Department a tax imposed by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840.*

Sec. 7. *“Taxpayer” means a person who is required to pay a tax or fee imposed by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 or a penalty or interest imposed for failure to make a timely return or payment of such a tax or fee.*

Sec. 8. *The Department interprets the term “days” as used in NRS 360A.240 and 360A.250 to mean business days.*

Sec. 9. *The Department will update the pamphlet setting forth the Taxpayers’ Bill of Rights for Taxes on Fuels, and the description of regulations relating thereto required pursuant to section 17 of chapter 9, Statutes of Nevada 2005, 22nd Special Session, at page 132, whenever necessary and will provide a copy of the pamphlet to each taxpayer.*

Sec. 10. *If the Department intends to lock and seal the place of business of a person for violating any provision of NRS 360A.030, the Department will provide the person with written notice not less than 10 business days before the day and time the Department intends to lock and seal the business. The notice may be served personally or by mail in the manner set forth in NRS 360A.030.*

Sec. 11. 1. *If a check or other method of payment submitted to the Department for payment of any tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840 is returned to the Department or otherwise dishonored upon presentation for payment as the result of the error or fault of a financial institution, the Department:*

(a) Will not charge or collect the additional fee as set forth in NRS 360A.040; and

(b) Will deem a subsequent payment of the tax or fee to have been received as of the date of receipt of the erroneously dishonored payment.

2. The taxpayer has the burden of proving that the payment was returned or otherwise dishonored as the result of the error or fault of the financial institution.

Sec. 12. 1. *A taxpayer who wishes to obtain relief from all or part of any interest or penalty, or both, must file an application with the Department. The application must:*

(a) Comply with the provisions of NRS 360A.070; and

(b) Except as otherwise provided in this section, be filed in writing with the Department within 30 days after the date on which the tax is paid or the notice of the deficiency determination is served on the taxpayer. If the notice of the deficiency determination is served by mail, the period for filing the application is extended by 3 days.

2. Except as otherwise provided in this section, the Director or a hearing officer designated by him will review each application to determine whether good cause exists to grant relief for all or part of any interest or penalty, or both.

3. If the Director or his designee finds that the taxpayer's delinquent payment was proximately caused by earthquake, fire, flood or other act of God and the payment was made as soon as reasonably possible thereafter, the full amount of any penalty and interest imposed on the delinquent payment will be waived.

4. If the Director or his designee finds that the taxpayer's delinquent payment was proximately caused by theft, the serious illness of the taxpayer, a member of his family or his agent whose job or duty it is to collect, account for or pay the tax, or other similar cause which was not directly related to the actions of the taxpayer or his agent, and that payment was made as soon as reasonably possible thereafter:

(a) The penalty for the delinquent payment is:

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

(2) Not more than 4 percent of the tax if the payment is not more than 5 days late;

(3) Not more than 6 percent of the tax if the payment is not more than 10 days late;

(4) Not more than 8 percent of the tax if the payment is more than 10, but less than 15 days late; and

(5) Not more than 10 percent of the tax if the payment is more than 15 days late.

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

(c) If the total of the penalty and interest after any reduction calculated pursuant to paragraphs (a) and (b) equals \$5 or less, the penalty and interest will be waived completely.

5. The Department will not consider an application to waive or reduce a penalty or interest, or both, filed pursuant to NRS 360A.070 if the final delinquency determination includes a penalty imposed pursuant to:

(a) NRS 360A.120 for negligence or intentional disregard of any applicable provision of chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840, or the regulations of Department adopted pursuant thereto; or

(b) NRS 360A.130 for fraud or an intent to evade the payment of a tax or fee required by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840, or the regulations of Department adopted pursuant thereto.

6. The provisions of this section do not apply to a taxpayer who has entered into a agreement with the Department pursuant to NRS 360A.080 and sections 13 and 14 of this regulation.

Sec. 13. *1. A taxpayer who wishes to enter into an agreement with the Department to pay a tax, fee, interest or penalty in installments pursuant to NRS 360A.080 must:*

(a) Submit a written request to the Department;

(b) Submit sufficient accurate information to enable the Department to determine whether to enter into the agreement; and

(c) Agree in writing to:

(1) Comply with the provisions of all applicable laws and regulations of the Department during the period in which the agreement is in effect, including, without limitation, reporting and payment requirements;

(2) Make all payments by cashier's check, electronic funds transfer, traveler's check, money order or cash; and

(3) Waive any right to a hearing pursuant to NRS 360A.180.

2. The Department may refuse to enter into an agreement with a taxpayer to pay a tax, fee, interest or penalty in installments if the taxpayer has not complied with a previous agreement with the Department.

Sec. 14. 1. *If the Department offers to enter into an agreement with a taxpayer to pay a tax, fee, interest or penalty in installments pursuant to NRS 360A.080, the taxpayer must, before the Department will execute the agreement, submit to the Department:*

(a) The initial payment set forth in the terms of the agreement; and

(b) A personal guarantee of payment in full given by:

(1) The taxpayer, in his individual capacity, if the taxpayer is the sole responsible person; or

(2) For all other taxpayers, two responsible persons in their individual capacities.

2. *As used in this section, “responsible person” includes:*

(a) An officer or employee of a corporation; or

(b) A member or employee of a partnership or limited-liability company,

↳ whose job or duty it is to collect, account for, or pay to the Department a tax imposed by chapter 365, 366 or 373 of NRS or NRS 590.120 or 590.840.

Sec. 15. 1. *Except as otherwise provided in section 16 of this regulation, a taxpayer who receives notice of a deficiency determination pursuant to NRS 360A.140 and wishes to obtain a redetermination must file a petition for a redetermination with the Department within 30 days after being served with the notice.*

2. *A petition for a redetermination must comply with NRS 360A.170 and be submitted:*

(a) On a form provided by the Department; or

(b) In the form of a letter. The letter must include:

(1) Sufficient information to give notice to the Department that the taxpayer is disputing the deficiency determination;

(2) The name of the taxpayer;

(3) The account number assigned to the taxpayer by the Department; and

(4) The amount of the tax, penalty or interest that is in dispute.

3. A taxpayer who wishes an oral hearing pursuant to NRS 360A.180 must request such a hearing in the petition.

4. A taxpayer who files a petition for redetermination may withdraw the petition at any time by submitting a written request, in the form of a letter, to the Department.

Sec. 16. 1. *A taxpayer who receives notice of a deficiency determination pursuant to NRS 360A.140 and wishes to obtain a redetermination, but is unable to file a petition for a redetermination with the Department as set forth in section 15 of this regulation, may request an extension of time to file the petition.*

2. The request for an extension of time must:

(a) Be in writing;

(b) Be filed with the Department within 30 days after the taxpayer is served with the notice of deficiency determination; and

(c) Set forth the circumstances the taxpayer believes constitute good cause for his failure to timely file his petition for redetermination.

3. The Department will grant a request for an extension of time if:

(a) The request complies with the provisions of this section and NRS 360A.160; and

(b) The Department determines that there is good cause for the taxpayer's failure to timely file his petition.

Sec. 17. 1. *A taxpayer who is required to deposit security with the Department to petition for a reconsideration pursuant to NRS 360A.230, 360A.240 and 360A.250 must deposit an amount equal to the amount set forth in the deficiency determination.*

2. *The security may be in the form of:*

(a) *A surety bond;*

(b) *A cash payment; or*

(c) *Other form of security as set forth in NRS 100.065.*

Sec. 18. Chapter 366 of NAC is hereby amended by adding thereto a new section to read as follows:

The Department interprets the term “federal law” as used in NRS 366.203 to mean:

1. *26 U.S.C. § 4041(a)(1);*

2. *Treas. Reg. § 48.4041-8(b)(2)(i); and*

3. *Treas. Reg. § 48.4041-8(b)(2)(ii).*

Sec. 19. NAC 366.210 is hereby amended to read as follows:

366.210 1. A special fuel user who consumes special fuel in the propulsion of a motor vehicle off the public highways of this State may obtain a refund of the tax paid pursuant to NRS 366.190 for that portion of the special fuel purchased which is consumed off the public highways of this State.

2. A special fuel user who requests a refund pursuant to subsection 1 ~~shall:~~ **must:**

(a) If the motor vehicle is equipped with a computer or other device capable of computing the number of gallons of special fuel consumed off the public highways of this State, submit to the Department the information provided by the computer or other device as evidence of the amount of special fuel consumed off the public highways of this State; or

(b) If the motor vehicle is not equipped with a computer or other device capable of computing the number of gallons of special fuel consumed off the public highways of this State:

(1) Compute the amount of special fuel consumed off the public highways of this State by dividing the number of miles the vehicle was operated off the public highways of this State by the average number of miles traveled per gallon of special fuel consumed by the vehicle; and

(2) Submit to the Department the information necessary to establish to the satisfaction of the Department that the information used to make the computation required by subparagraph (1) is accurate.

3. A special fuel user who wishes to obtain a refund pursuant to this section must submit a request to the Department within 12 months after the date of the payment of the tax.

Sec. 20. NAC 366.220 is hereby amended to read as follows:

366.220 1. ~~Except as otherwise provided in this section, if a motor vehicle with auxiliary equipment consumes special fuel and there is no auxiliary motor or separate fuel tank for the auxiliary motor, the operator of the vehicle must, to obtain a refund pursuant to subsection 5 of NRS 366.207, provide to the Department documentation adequate to establish to the satisfaction of the Department the amount of special fuel which was used to operate the auxiliary equipment.~~
~~2. A special fuel user may obtain a refund pursuant to subsection 5 of NRS 366.207 without providing the documentation required by subsection 1 if the motor vehicle with auxiliary equipment has a common fuel reservoir that is used to propel the motor vehicle on the highway or to operate the auxiliary equipment. If a special fuel user operates such a motor vehicle and the motor vehicle is not specified in subsection 3, or if the special fuel user operates a vehicle specified in that subsection and claims a refund in a percentage that is greater than the percentage set forth in that subsection for the motor vehicle, the special fuel user must establish to the satisfaction of the Department that he is entitled to the refund in accordance with subsection 1.~~

~~3. The~~ *A special fuel user who is the* operator of a motor vehicle with auxiliary equipment set forth in this subsection may obtain a refund of the tax paid on the refundable fuel that is used by the motor vehicle on the public highways of this State in the following amounts:

- (a) Boom truck with a block boom. 10 percent
- (b) Car carrier with a hydraulic winch. 10 percent
- (c) Dump truck. 23 percent
- (d) Garbage truck with a compactor. 20 percent
- (e) Line truck with a digger or derrick. 20 percent
- (f) Mobile crane. 42 percent
- (g) Refrigeration truck. 15 percent
- (h) Sanitation truck. 15 percent
- (i) Semi-wrecker truck. 35 percent
- (j) Service truck with a jackhammer or pneumatic drill. 15 percent
- (k) Snow plow. 10 percent
- (l) Sweeper truck. 20 percent
- (m) Tank truck other than a truck with a milk or pneumatic tank. 24 percent
- (n) Truck for distributing hot asphalt. 10 percent
- (o) Truck with a cement mixer. 30 percent
- (p) Truck with a dump trailer. 15 percent
- (q) Truck with a milk tank. 30 percent
- (r) Truck with a pneumatic tank. 15 percent
- (s) Truck with a pump for cleaning a sewer or cesspool. 90 percent
- (t) Truck with an aerial lift. 20 percent

(u) Truck with equipment to move a dumpster or cargo container..... 23 percent

~~[4.]~~ **2.** To obtain a refund pursuant to ~~[subsection 3, the operator of the motor vehicle]~~ *this section, a special fuel user* must establish to the satisfaction of the Department that:

(a) The tax has been paid on the special fuel for which the ~~[operator]~~ *special fuel user* wishes to obtain a refund; and

(b) The special fuel was used in this State to operate auxiliary equipment that is mounted on the motor vehicle.

~~[5.]~~ **3.** Except as otherwise provided in NAC 366.230, a vehicle with an air-conditioning unit is not entitled to a refund pursuant to this section.

~~[6.]~~ **4.** Notwithstanding any provision of this section to the contrary, the amount of a refund allowed for a special fuel user ~~[or an operator]~~ pursuant to this section may not exceed the total amount of taxes paid by the special fuel user ~~[or operator]~~ for special fuel.

~~[7.]~~ **5.** As used in this section, “refundable fuel”:

(a) Means the total amount of special fuel purchased by a person during the period specified in subsection 5 of NRS 366.207 for which taxes have been paid pursuant to chapter 366 of NRS, less any amount of that special fuel:

- (1) That is claimed by the person for another exempt use;
- (2) For which any taxes are remitted to another jurisdiction on behalf of the person; and
- (3) That is used during that period for any other taxable use.

(b) Does not include special fuel for which a special fuel user ~~[or an operator]~~ has previously received a refund for credit.

6. A special fuel user who wishes to obtain a refund pursuant to this section must submit a request to the Department within 12 months after the date of the payment of the tax.

Sec. 21. NAC 366.104 is hereby repealed.

TEXT OF REPEALED SECTION

366.104 Waiver or reduction of penalty or interest for delinquent payment. (NRS 366.110)

1. An application for a waiver or reduction of a penalty or interest for a delinquent payment pursuant to NRS 366.3955 must be filed in writing with the Department within 60 days after the date on which the tax is paid and must set forth the circumstances that caused the delinquent payment.

2. In determining whether the circumstances that caused the delinquent payment were completely beyond the control of the person or his agent required to make the payments, the Department will consider evidence which shows that the delinquent payment was proximately caused by:

- (a) Fire, earthquake, flood or other acts of God;
- (b) Theft; or
- (c) Other similar causes that are not directly related to the actions of the person or his agent required to make the payment, whether intentional or negligent.

3. If the Department finds that a delinquent payment was proximately caused by fire, earthquake or other act of God and the tax was paid as soon as reasonably possible thereafter, the penalty imposed on the delinquent payment will be waived.

4. If the Department finds that the cause of a delinquent payment was proximately caused by theft or other similar cause which was not directly related to the actions of the person or his agent required to make the payment, and that payment was made as soon as reasonably possible thereafter:

(a) The penalty for the delinquent payment will be:

(1) Not more than 2 percent of the tax or the amount of the tax if the payment is not more than 2 days late;

(2) Not more than 4 percent of the tax or the amount of the tax if the payment is not more than 5 days late;

(3) Not more than 6 percent of the tax or the amount of the tax if the payment is not more than 10 days late;

(4) Not more than 8 percent of the tax or the amount of the tax if the payment is less than 15 days late; and

(5) Not more than 10 percent of the tax or the amount of the tax if the payment is more than 15 days late.

(b) The interest on the delinquent payment will be reduced by an amount equal to the rate of reduction to the penalty applied by the Department in accordance with paragraph (a).

(c) If the total penalty and interest after any reduction calculated pursuant to paragraphs (a) and (b) equals \$5 or less, the penalty and interest will be waived completely.

5. The Department will not consider an application to waive or reduce a penalty or interest, or both, filed pursuant to NRS 366.3955 if the assessment of the tax is accompanied by the assessment of a penalty based upon negligence, fraud or intent to evade the tax that has become final.