

Chapter 360 of NAC

LCB File No. T020-05

**ADOPTED TEMPORARY REGULATION
OF THE NEVADA TAX COMMISSION**

Filed with the Secretary of State on February 14, 2005.

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

AUTHORITY: NRS 360.090, 360.093 and 360.419

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

NAC 360.400 Waiver or reduction of penalty or interest for deficiency; redetermination; appeal. (NRS 360.090, 360.093, 360.419)

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 taxpayer or his agent may request a waiver or reduction of the penalty or interest for the deficiency 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. 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. Except as otherwise provided in subsection 9, if a taxpayer has made a late payment on a deficiency issued pursuant to NRS 360.355 and requested a waiver of penalty assessed under NRS 360.400:

- (a) The Department shall waive the penalty for the late payment if:*
- (1) The total penalty for the late payment is \$5 or less; or*
 - (2) The late payment:*

(I) Is the only late payment for that same type tax that the taxpayer has submitted in the 12 months immediately preceding the deficiency due date, or in the 24 months immediately preceding the deficiency due date 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) At the request of a taxpayer, the Department shall reduce the penalty on the late payment of a deficiency if:

(1) The taxpayer had made only one other late payment for the same tax during the 12 months immediately preceding the deficiency due date or during the 24 months immediately preceding the deficiency due date 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 on the late payment of a deficiency 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.

5. If the Department must reduce the penalty on a late payment of a deficiency pursuant to paragraph (b) of subsection 4:

(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.

~~4.~~ **6.** In determining, for the purposes of subsection 1, 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~~ **360.407** 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.~~ **7.** 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.

~~6.1~~ 8. 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.

~~7.1~~ 9. 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.

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

NAC 360.402 Waiver or reduction of penalty or interest for late payment. (NRS 360.090, 360.093, 360.419)

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]~~ 360.407 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.

NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T018-05

The Nevada Tax Commission adopted regulations assigned LCB File No. T020-05 which pertain to chapter 360 of the Nevada Administrative Code on February 14, 2005.

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 temporary regulations 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; and Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada.

A copy of the notice of hearing and the proposed temporary regulations 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 temporary regulations 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 February 8, 2005 at the Public Utilities Commission, 1150 E. Williams Street, Room A, Carson City, Nevada and Video Conferenced to the Public Utilities Commission, 101 Convention Drive, Suite 250, Room A, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed temporary regulations, only affected or interested persons and businesses as set forth in #3 below responded to the proposed temporary regulations 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 temporary regulations, for practical purposes, was discussed at one workshop 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: 31

(b) Testified at the hearing: 1

(c) Submitted to the Tax Commission written comments: No written comments by the general public 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 and interested persons, 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 temporary regulations were adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the temporary regulations without change.

The proposed temporary regulations were modified at a public workshop prior to adoption, due to issues raised by the Department of Taxation. The proposed temporary regulations was changed at the public hearing reflecting minor technical corrections raised by the Department of Taxation, and the Tax Commission believed no changes other than those made were necessary.

5. The estimated economic effect of the adopted temporary regulations on the businesses 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 temporary regulations present no foreseeable or anticipated adverse economic effects to businesses or the public. However, the temporary regulations will have a beneficial impact on taxpayers for clarification and procedural purposes with regard to requests for penalty and interest reductions. That effect cannot be quantified 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 temporary regulations.

The proposed temporary regulations present no significant foreseeable or anticipated cost or decrease in costs for enforcement. However, it appears that there may be some minor additional administrative costs for the Department of Taxation, which cannot be quantified at this time.

7. A description of any regulations of other state or governmental agencies which the temporary regulations overlap or duplicate and a statement explaining why the duplication or

overlap is necessary. If the temporary regulations overlap or duplicate a federal regulation, the name of the regulating federal agency.

The proposed temporary regulations are particular to the Department of Taxation practices and procedures and do not appear to overlap or duplicate regulations of other state or local governmental agencies.

8. If the temporary regulations include 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 tax procedures, which are the subject of the proposed temporary regulations.

9. If the temporary regulations provide 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 temporary regulations do not provide a new fee or increase an existing fee.