

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R206-07

February 13, 2008

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

AUTHORITY: §1, NRS 360.090, 360.093, 360.417 and 360.419; §§2 and 3, NRS 360.090 and 360.419.

A REGULATION relating to taxation; revising the provisions relating to a waiver or reduction of the penalty or interest assessed for the late payment of certain taxes or fees; and providing other matters properly relating thereto.

Section 1. NAC 360.396 is hereby amended to read as follows:

360.396 1. The Department shall waive or reduce a penalty or interest, or both, for a late payment if the total penalty and interest for the late payment is \$15 or less.

2. The Department may waive or reduce a penalty or interest, or both, for a late payment if the late payment 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.

3. In determining whether to waive or reduce the penalty or interest, or both, for a late payment pursuant to subsection 2, the Department may consider:

- (a) The history of compliance and timely payment of the taxpayer;
- (b) The weight and sufficiency of the evidence supporting the request of the taxpayer to waive or reduce the penalty or interest, or both, for the late payment;

(c) 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:

(1) Fire, earthquake, flood or other acts of God, theft, or the death or serious illness of the taxpayer or his agent or a member of the immediate family of the taxpayer;

(2) ~~[An error or the misconduct]~~ *Misconduct* of an employee of the taxpayer ~~[;]~~, *including, without limitation, embezzlement;*

(3) Erroneous written information provided to the taxpayer or his agent by the Department; and

(4) The misaddressed but timely mailing of the return or payment; and

(d) Any other factor deemed by the Department to be relevant.

Sec. 2. NAC 360.397 is hereby amended to read as follows:

360.397 1. Except as otherwise provided in NAC 360.398, a taxpayer or his agent may request the waiver or reduction of the penalty or interest, or both, by submitting to the Department a written statement *signed under oath by the taxpayer or his agent*, which sets forth the facts and circumstances surrounding the failure of the taxpayer to make the payment in a timely manner.

2. The Department shall not consider a request made pursuant to subsection 1 ~~[unless]~~ *until* the taxpayer ~~[pays]~~ *has paid* in full the tax or fee upon which the interest or penalty is assessed. ~~[within 120 days after the date on which the payment was due.]~~

Sec. 3. NAC 360.398 is hereby amended to read as follows:

360.398 1. If a notice of a deficiency determination has been issued by the Department pursuant to NRS 360.350, a taxpayer who files a petition for redetermination pursuant to NRS 360.360 may:

(a) Submit, with the petition for redetermination, a written request for the waiver or reduction of the penalty or interest, or both; or

(b) Request before the conclusion of the hearing on the petition for redetermination conducted pursuant to NRS 360.370 that the hearing officer waive or reduce the penalty or interest, or both.

2. ~~[A request submitted pursuant to subsection 1 shall not be deemed to be an admission on the part of the taxpayer regarding the correctness of the tax or fee.~~

~~—3.]~~ If a taxpayer requests, pursuant to paragraph (a) of subsection 1, the waiver or reduction of the penalty or interest, or both, *and does not challenge the correctness of the tax or fee that is the subject of the deficiency determination*, the Director *or his designee* shall ~~[determine whether a hearing on the request is required. If the Director determines that:~~

~~—(a) A hearing on the request is not required, the Director shall]~~ make a determination on the request ~~[-~~

~~—(b) A hearing on the request is required, the Director shall refer the request to a hearing officer for a hearing conducted in accordance with NAC 360.095 to 360.170, inclusive.~~

~~—4.] in the manner prescribed in NAC 360.396.~~

3. If a taxpayer requests ~~[-, pursuant to paragraph (b) of subsection 1,]~~ the waiver or reduction of the penalty or interest, or both, *pursuant to:*

(a) Paragraph (a) of subsection 1 and challenges the correctness of the tax or fee that is the subject of the deficiency determination; or

(b) Paragraph (b) of subsection 1,

↪ the hearing officer shall make a determination on the request as part of the adjudication of the petition for redetermination. If the hearing officer grants the request to waive or reduce the

penalty or interest, or both, the hearing officer may order that the waiver or reduction is contingent upon the requirement that the taxpayer pay the tax or fee for which the penalty or interest was assessed not more than 30 days after the issuance of the decision of the hearing officer.

~~[5.]~~ 4. A taxpayer aggrieved by a determination of the Director *or his designee* or a hearing officer regarding a request to waive or reduce the penalty or interest, or both, may appeal that determination to the Commission in the manner provided pursuant to NRS 360.245 to 360.390, inclusive.