

Chapter 362 of NAC

LCB File No. T003-07

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

**Filed with the Secretary of State on December 21, 2006**

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

AUTHORITY: §§1-15, 19 and 20, NRS 360.090 and 362.120; §§16-18, NRS 360.090 and 362.110; §21, NRS 360.090 and 360.230; §22, NRS 360.090.

A REGULATION relating to taxation; establishing the procedures for calculation of net proceeds of geothermal mine operations; providing certain requirements concerning the filing and receipt of annual statements of net proceeds of extracted minerals; and providing other matters properly relating thereto.

**Section 1.** Chapter 362 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 11, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Field” means the area of operations from which a geothermal resource is extracted and transported prior to any further beneficiation.*

**Sec. 4.** *“Plant” means the facility at which processing of the geothermal resource occurs. The facility is typically a generation power plant, but other types of processing may also occur.*

**Sec. 5.** *“Mining functions” means activities related to the extraction of the geothermal resource, such as, but not limited to, drilling, pumping, reinjection, roadwork, and transportation of the resource prior to any further processing by a gathering system.*

**Sec. 6.** *"Processing allowance" means the costs associated with the conversion of the geothermal resource into electricity, heat, or other by-product and include activities occurring after all mining functions have been completed, and prior to transportation of the processed product to market.*

**Sec. 7.** *"Processing" means activities typically occurring beyond the inlet of a geothermal resource processing facility. Such activities change the production stream's physical or chemical characteristics, enhance the marketability of the stream, or enhance the value of the separate components of the stream. Processing includes, but is not limited to, flashing, beneficiation, stabilizing, separation, and compression (other than production compression such as re-injection, wellhead pressure regulation or the changing of pressures and temperatures in a reservoir) which occur within a plant, such as, but not limited to, a plant generating electrical power.*

**Sec. 8.** *"Repowering" means the replacement of aging steam production equipment with new technology. As power plants age, the efficiency of steam production equipment declines and/or the equipment becomes technologically obsolete, even with regular maintenance. "Repowering" offers the opportunity to increase the efficiency of the process through the installation of new, improved equipment. Repowering is usually only cost-effective when the existing plant has poor reliability and is at the end of its useful life, or if large environmental compliance costs are required at the plant.*

**Sec. 9.** *"Transportation allowance" means the costs incurred for any movement of a geothermal resource converted into electricity, heat, or other by-product which is performed by the operator and occurs after processing.*

**Sec. 10.** *The net proceeds of the geothermal resource must be calculated using the gross yield as determined pursuant to the requirements of NAC 362.015 less the deductions available to be claimed set forth in NRS 362.120 and NAC Chapter 362.*

**Sec. 11.** **NAC 362.015 is hereby amended to read as follows:**

NAC 362.015 1. As used in this section, “transaction” means a bona fide transaction conducted at arms length involving geothermal resources at the wellhead.

2. To assess and tax the net proceeds of an operating facility which extracts geothermal resources, the gross *yield* of the geothermal resources must be determined pursuant to this section.

3. If the transaction involves the *direct, arm’s length* sale of the geothermal resource, the gross *yield* of the geothermal resource equals the proceeds of the sale *of the geothermal resource.*

4. If the transaction involves the *indirect sale of the geothermal resource*, the gross *yield* of the geothermal resource *is the total revenue received from the sale of electricity, heat or other by-product agreed upon by the parties to the sale, less a processing allowance and a transportation allowance. If the selling price includes processing and transportation costs, the person extracting the geothermal resource shall report such costs on a form prescribed by the Department; and the Department shall consider such costs to determine the gross yield of the geothermal resource.*

*(5) In the case of an indirect sale of the geothermal resource used to produce electricity, all energy, capacity, and other payments received, if applicable, shall be included in the gross yield.*

*(6) If the costs associated with the processing allowance and transportation allowance are represented by a bona fide arm's-length contract, such costs shall be deemed to be the appropriate deduction from the selling price, and may include the negotiated costs for the operation, maintenance and replacement of the plant paid by the operator of the field reduced by any negotiated costs for the operation, maintenance and replacement of the field paid by the operator of the plant. These costs include, but are not limited to:*

*(a) A negotiated sharing of the operating and maintenance costs of the field and the plant, evidenced by a contract or other documentation acceptable to the Department;*

*(b) A negotiated agreement that the operator of the field will pay for necessary improvement to the plant, evidenced by a contract or other documentation acceptable to the Department.*

*(7) If the costs associated with the processing allowance and transportation allowance are not represented in a bona fide arm's-length contract, the Department must consider the following:*

*(a) The annual total cost of operating and maintaining the processing plant and transmission line or other transportation facilities and equipment used to transport the geothermal product after mining and processing functions are complete, including, but not limited to, reasonable and prudent costs incurred for direct wages, benefits, workman's compensation, supplies, materials, charges for overhead, general liability insurance incurred as a result of the processing plant and transmission line, and costs of obtaining and maintaining permits and licenses necessary for operation of processing plant or transmission facility such as site permits and air quality permits.*

*(I) The transportation allowance for a transmission line is allowed only in direct proportion to the relationship of the field operator's investment to the total cost of the transmission line.*

*(b) Except as otherwise provided by NAC 362.100 to 362.160, inclusive, the depreciation of the capital investment in the transmission line **and plant** using the straight-line method *over the useful life of the asset as established by the Personal Property Manual published by the Department pursuant to NAC 361.1361*; and*

*(c) An allowance for return on the investment in the transmission line **and plant**, calculated by multiplying, the **acquisition cost** in the transmission line **and plant as recorded in the books of the operator**, by an overall rate of return on capital. *The overall rate of return on capital shall be based on the appropriate electric industry cost of capital study performed by the department pursuant to NAC 361.408 and NAC 361.425.**

*(I) If a power purchase agreement exists, the Department may grant the allowance for return on investment for a period equal to the remaining term of the power purchase agreement, but not more than 15 years. If no power purchase agreement exists, the term shall be equal to the remaining life of the plant and transmission line but not more than 15 years.*

*(II) In the event a repowering or reinvestment in the transmission or plant occurs, the taxpayer may apply for an extension of the allowance for a return on investment. The Department may grant the extension of the allowance for return on investment for a period equal to the lesser of 15 years or the remaining life of the assets purchased.*

*(I) The remaining life of the assets purchased must reasonably reflect the useful life of the asset as established by the Personal Property Manual published by the Department pursuant to NAC 361.136.*

*(III) The Department may require the taxpayer to submit additional information in order to calculate the allowance for return on investment, including the amount of recapitalization or repowering, the established life of the assets purchased, and the audit of the books and records of the company.*

*(IV) In the event an extension for the allowance is granted, the return on investment is limited to the amount of the recapitalization or repower.*

*(d) Wheeling charges and line loss charges, if applicable.*

*(e) Amortization of long-term power purchase contracts using the straight-line method over the stated life of the contract. The amount to be amortized shall not exceed 60% of the original book value.*

**NOTICE OF ADOPTION OF TEMPORARY REGULATION  
LCB File No. T003-07**

The Nevada Tax Commission adopted temporary regulations assigned LCB File No. T003-07 which pertain to chapter 362 of the Nevada Administrative Code on September 11, 2006.

**INFORMATIONAL STATEMENT**

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066

TEMPORARY REGULATIONS OF THE NEVADA TAX COMMISSION

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 362.015.

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

The Department of Taxation (Department), as staff to the Nevada Tax Commission (NTC), solicited comments from the public by sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>	<u>Number Notified</u>	<u>Representing Businesses</u>
January 24, 2006	Workshop	March 16, 2006	603	338
June 6, 2006	Workshop	June 27, 2006	599	338
August 11, 2006	Hearing	September 11, 2006	599	338

The mailing list included the interested parties list maintained by the Department, as well as officials of local jurisdictions subject to these regulations.

Many oral and written comments were received at the workshop. A copy of the audio taped comments or the record of proceedings may be obtained by calling the Department at (775) 684-2180 or by writing to the Department of Taxation, 1550 College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at [lheyman@tax.state.nv.us](mailto:lheyman@tax.state.nv.us).

2. **The number persons who:**  
 (a) **Attended and testified at each workshop:**

<u>Date of Workshop</u>	<u>Attended</u>	<u>Testified</u>
March 16, 2006	17	14
June 27, 2006	27	12

- (b) **Attended and testified at each hearing:**

<u>Date of Hearing</u>	<u>Commissioners/ Public Attended</u>	<u>Public Testified</u>
September 11, 2006	51	5

- (c) **Written Comments submitted to the agency:**

<u>Date of Hearing</u>	<u>Number Received</u>
September 11, 2006	1

1 document of proposed language changes were submitted to the Department.

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 notices posted at the Nevada State Library; various Department locations throughout the state; and at the Main Public Libraries in counties where an office of the Department is not located. Comments were also solicited by direct mail to 599, county assessors and the interested parties list maintained by the Department. Approximately 56% of the approximately 599 direct mail notices were sent to individuals or associations representing business.

The Department, NTC Members, County Assessors and the general public commented on all of the proposed language changes during the workshop process. Members of the NTC, Department, and general public commented during the Adoption Hearing.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Department at (775) 684-2180 or by writing to the Department of Taxation, 1550 College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at lheyman@tax.state.nv.us.



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.**

Three minor language changes were made to Section 7 to improve readability and clarify meaning.

5. **The estimated economic effect of the adopted regulation 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.**

The proposed temporary regulation is intended to provide guidelines for reporting revenue of geothermal independent power producers, including energy payments, capacity payments, bonus capacity payments, and supplemental payments. The beneficial effects are more accurate and consistent reporting of the total revenue subject to the definition of gross yield for geothermal power plants. The proposed temporary regulation also provides clarification on the allowances to the gross yield. The proposed temporary regulation presents no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public, except that net proceeds may be reduced as a result of additional allowances. However, the regulations could have a beneficial economic effect on certain businesses and the general public by providing consistent reporting requirements. Those impacts cannot be quantified at this time.

6. **The estimated cost to the agency for enforcement of the adopted regulation.**

The Department anticipates little, if any, additional cost to administer the regulations.

7. **A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed amendments duplicate.

- 8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

There are no federal regulations regarding the valuation of property.

- 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 Nevada Tax Commission is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.