

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R058-11

September 12, 2011

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

AUTHORITY: §§1-12, NRS 360.090 and 362.120.

A REGULATION relating to taxation; setting forth the changes to deductions allowed for operating costs as specified by SB 493 (2011); 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 11, inclusive, of this regulation.

Sec. 2. *As used in NAC 362.050 and NAC 362.250 and sections 2 to 8, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 4, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *1. “Developmental work” means pre-production activities undertaken to gain access to established commercially minable mineral reserves, including shaft design and sinking, permanent excavations, building transport infrastructure and initial removal of overburden.*

2. Examples of such pre-production activities include, but are not limited to, lateral development; construction of ramps, collars, portals, drum hoists, friction hoists, wire ropes, sheaves, conveyances, headframes, bins, conveyors, feeders, ventilation and air conditioning systems, compressed air systems, electrical transmission, passes, and chutes. Pre-production activities may also include mine dewatering, backfill, use of explosives and drilling to outline the location of the ore of the mine.

3. If no reserves have been demonstrated, the work must be considered mineral exploration rather than developmental work.

Sec. 4. *“Mineral exploration” means activities related to the search for mineral reserves which do not occur during the development or production stages in the life of a mine, including drilling, sampling, assaying, metallurgical testing, engineering studies, economic feasibility studies and project permitting.*

Sec. 5. **NAC 362.050 is hereby amended to read as follows:**

1. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are deductible except as limited by subsection ~~6~~, **7, AND 8** of NRS 362.120:

(a) The cost of renting equipment, if the amount paid as rental is commercially reasonable in the circumstances;

(b) The cost of contracting for all or part of the mine’s operations, if the contract price is commercially reasonable in the circumstances, ***EXCEPT ANY PORTION OF THE COST OF CONTRACTING WHICH WOULD OTHERWISE NOT BE DEDUCTIBLE IF THE OPERATOR HAD DIRECTLY PROVIDED OR PERFORMED THE SERVICE OR ACTIVITY;***

(c) The cost of services which a Nevada mine receives under contract from its corporate office ***LOCATED IN NEVADA AND WHICH DIRECTLY SUPPORTS MINING OPERATIONS*** or the office of a related corporation ***LOCATED IN NEVADA AND WHICH DIRECTLY SUPPORTS MINING OPERATIONS***, if:

- (1) The cost is commercially reasonable in the circumstances; and
- (2) The cost is separately stated in a manner consistent with good accounting practices;

(d) The reasonable cost of management provided to a joint venture by a member, if the fees relate directly to operation of the mine **AND IF THE FEES ARE ASSOCIATED WITH THE DIRECT COSTS OF ACTIVITIES PERFORMED IN THE STATE OF NEVADA;**

~~[(e) The sales and use taxes expended for tangible goods or taxable services to the extent that the cost of such goods or services is an allowable operating cost;~~

~~—(f) The direct cost of housing for employees that is owned and maintained by the operator of the mine, including, without limitation, any losses to the housing that are incurred by the operator of the mine, but as reduced by any payments received for rental of the property;]~~

(g) If the taxpayer has a policy which prohibits the personal use of a vehicle by an employee, the cost of vehicle allowances to the extent that the vehicle is actively engaged in the business of the mine **AND OCCURS WITHIN THE STATE OF NEVADA;**

(h) The cost of transportation services provided by a third party **THAT IS NOT UNDER THE JURISDICTION OF THE PUBLIC UTILITIES COMMISSION OF NEVADA OR THE NEVADA TRANSPORTATION AUTHORITY** or the owner of the mine for employees to get to and from a point of extraction or reduction of the mine, **FOR THAT PORTION OF THE TRANSPORTATION SERVICE THAT OCCURS WITHIN THE STATE OF NEVADA; and]**

(i) The cost of compensation for employees. As used in this paragraph, “compensation” means wages, salaries, paid vacation leave, paid sick leave, performance-related bonuses, contributions to and administrative costs of qualified pension and retirement plans, 401k and similar deferred benefit plans, ~~[dental insurance, medical insurance, accidental death and dismemberment insurance,]~~ Medicare contributions, social security payments, ~~[medical clinic and hospital expenses,]~~ state and federal unemployment compensation contributions or payments, ~~[workers’ compensation insurance,]~~ and postemployment training expenses for

training conducted in compliance with the Mine Safety and Health Administration and the Division of Industrial Relations of the Department of Business and Industry or their successor organizations.

2. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are not deductible:

- (a) Cost or expenses which are capitalized;
- (b) Gifts, grants and donations;
- (c) Costs of public relations and influencing or seeking to influence governmental activities;
- (d) Costs of *MINERAL* exploration and development *AL WORK* related to ore bodies outside the geographic area which can economically provide a source of raw materials to the plant located at the mine;
- (e) Federal income taxes, all property taxes, the business license tax imposed pursuant to chapter 364A of NRS, the tax on net proceeds of minerals and, except as otherwise provided in paragraph (e) of subsection 1, any other tax that an operator of a mine is required to pay to the Federal Government, this State or any other state, or a political subdivision thereof;
- (f) Costs associated with providing health clubs for employees;
- (g) Except as otherwise provided in paragraph (f) of subsection 1 of this section and paragraph (a) of subsection 2 of NAC 362.030, costs incurred for pre-employment activities, including, without limitation, reimbursement for expenses for ~~housing,~~ moving and relocation;
- (h) Except as otherwise provided in paragraph (i) of subsection 1, costs associated with union trust funds;
- (i) Costs associated with providing day care facilities for the children of employees;
- (j) General liability insurance; ~~and~~

(k) Excess policies of general liability insurance;

(L) FIRE INSURANCE ON THE MACHINERY, EQUIPMENT, APPARATUS, WORKS, PLANTS AND FACILITIES;

(M) COSTS ASSOCIATED WITH SEVERING THE EMPLOYMENT OF ANY EMPLOYEE;

(N) DUES PAID TO A THIRD-PARTY ORGANIZATION OR TRADE ASSOCIATION TO PROMOTE OR ADVERTISE A PRODUCT; AND

(O) COSTS OF MINERAL EXPLORATION.

3. If a cost is partially deductible and partially nondeductible, the deductible portion must be allowed. In determining the portion of such costs which is allowable as a deduction, a reasonable allocation must be made based upon available information.

Sec. 4. NAC 362.230 is hereby repealed.

Sec. 5. NAC 362.240 is hereby repealed.

Sec. 6. NAC 362.300 is hereby repealed.

Sec. 7. NAC 362.310 is hereby amended to read as follows:

~~[1. A taxpayer who reports a deduction pursuant to subsection 1 of NAC 362.300 according to an accrual method of accounting may claim a deduction for [qualified] reclamation costs, which are incurred during the reporting period, in an amount equal to the amount calculated by:~~

~~— (a) If the taxpayer has not performed concurrent reclamation during the reporting period:~~

~~— (1) Dividing the number of units of production from the mine which were sold during the reporting period by the total number of units of production which are determined by the operator of the mine at the beginning of the reporting period to be available to be recovered for the reporting period;~~

~~——(2) Subtracting the cumulative amount of any deductions for reclamation performed by the taxpayer in the previous reporting periods from the qualified reclamation costs; and~~

~~——(3) Multiplying the amount calculated pursuant to subparagraph (1) by the amount calculated pursuant to subparagraph (2).~~

~~——(b) If the taxpayer has performed concurrent reclamation during the reporting period:~~

~~——(1) Dividing the number of units of production from the mine which were sold during the reporting period by the total number of units of production which are determined by the operator of the mine at the beginning of the reporting period to be available to be recovered for the reporting period;~~

~~——(2) Subtracting the cumulative amount of any money paid for concurrent reclamation during the previous reporting periods from the qualified reclamation costs;~~

~~——(3) Subtracting the cumulative amount of any deductions for reclamation performed by the taxpayer in the previous reporting periods, minus the cumulative amount of any money paid for concurrent reclamation during the previous reporting periods, from the amount calculated pursuant to subparagraph (2);~~

~~——(4) Multiplying the amount calculated pursuant to subparagraph (1) by the amount calculated pursuant to subparagraph (3); and~~

~~——(5) Subtracting the amount of any money paid for concurrent reclamation during the current reporting period from the amount calculated pursuant to subparagraph (3).~~

2. A taxpayer ~~[who reports a deduction pursuant to subsection 2 of NAC 362.300 according to a cash method of accounting]~~ may claim a deduction for any money paid during the reporting period for reclamation performed by the taxpayer.

~~—3. As used in this section, “concurrent reclamation” means reclamation that is performed by the taxpayer during the reporting period for which the taxpayer is calculating his deduction according to an accrual method of accounting for qualified reclamation costs which are incurred during the reporting period.~~

Sec. 8. NAC 362.330 is hereby repealed.

TEXT OF REPEALED SECTIONS:

NAC 362.230 “Developmental work” defined. (NRS 360.090, 362.120) “Developmental work” means any activity performed on the property of a mine which outlines the location of the ore of the mine and prepares the ore for production, including, without limitation, drilling, rock work and construction of support systems to increase the ore reserves of the mine.

NAC 362.240 “Qualified reclamation costs” defined. (NRS 360.090, 362.120) “Qualified reclamation costs” means an amount equal to 90 percent of the reclamation costs.

NAC 362.300 “Actual cost of extracting the mineral” interpreted. (NRS 360.090, 362.120)

For the purposes of paragraph (a) of subsection 3 of NRS 362.120, the Commission interprets deductions from net proceeds of extracted minerals for the “actual cost of extracting the mineral” by a taxpayer to include:

1. If the taxpayer reports deductions according to an accrual method of accounting, a deduction for qualified reclamation costs which are incurred during the reporting period and which must be calculated pursuant to subsection 1 of NAC 362.310.
2. If the taxpayer reports deductions according to a cash method of accounting, a deduction for any money paid during the reporting period for reclamation performed by the taxpayer.

NAC 362.320 Change in method of accounting. (NRS 360.090, 362.120)

1. A taxpayer who has reported deductions for reclamation costs ~~for qualified reclamation costs~~ according to an accrual method of accounting in a reporting period may not change his method of accounting to a cash method of accounting in a subsequent reporting period.

2. Except as otherwise provided in this subsection, a taxpayer who has reported deductions for reclamation costs according to a cash method of accounting in a reporting period may not change his method of accounting to an accrual method of accounting in a subsequent reporting period unless the Department, upon written application of the taxpayer, approves a change in the method of accounting. If the taxpayer demonstrates to the Department that a proposed change in the method of accounting will not result in the double counting of any deductions for reclamation costs for that reporting period, the Department may approve the change in the method of accounting.

NAC 362.330 Deductions following sale of mine. (NRS 360.090, 362.120) Except as otherwise provided in this section, if a taxpayer sells the assets of a mine before closure of the mine, the buyer must report any deductions for reclamation costs or qualified reclamation costs according to the same method of accounting used by the seller, unless the Department, upon written application of the taxpayer, approves a change in the method of accounting. If the buyer demonstrates to the Department that a proposed change in the method of accounting will not result in a deduction for qualified reclamation costs or reclamation costs which have been previously deducted by the seller, the Department may approve the change in the method of accounting.