

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R172-12

July 23, 2012

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

AUTHORITY: §§1-4, NRS 360.090 and 362.120.

A REGULATION relating to taxation; repealing the provisions regarding the accelerated depreciation of certain capitalized costs to determine the net proceeds of minerals; and providing other matters properly relating thereto.

Section 1. NAC 362.040 is hereby amended to read as follows:

362.040 1. ~~[Except as otherwise provided by NAC 362.100 to 362.160, inclusive, leasehold]~~ *Leasehold* improvements and buildings must be depreciated over a 20-year period using the straight-line method.

2. ~~[Except as otherwise provided by NAC 362.100 to 362.160, inclusive, fixed]~~ *Fixed* machinery and equipment must be depreciated over a 20-year period using the straight-line method.

3. Mobile machinery and equipment must be depreciated over a 10-year period using the straight-line method.

4. Automobiles and light service vehicles must be depreciated over a 5-year period using the straight-line method.

5. ~~[Except as otherwise provided by NAC 362.100 to 362.160, inclusive, an]~~ *An* integrated processing assembly must be depreciated over a 20-year period using the straight-line method.

Subsequent additions to the unit must also be reported and be depreciated over a 20-year period using the straight-line method.

6. If any property is disposed of before the end of the depreciation period, the remaining amount of allowable depreciation, if the property had remained in use, may be reported in total as an additional expense of depreciation for the reporting period. The amount of depreciation must be reduced by the amount of any consideration received for the property from sale, insurance recovery, trade-in or any other reimbursement, but not below zero.

7. A mining operator may petition the Nevada Tax Commission for reconsideration of the allowable depreciation of property. The Commission may adjust the allowable depreciation if the petitioner presents satisfactory evidence that the expected life of the property is longer than that which is provided for in this section. ~~[If the Commission finds that the petitioner has presented satisfactory evidence that the expected life of the property is shorter than that which is provided for in this section, the petitioner must comply with the provisions of NAC 362.100 to 362.160, inclusive, to apply for permission to depreciate the property in the accelerated manner prescribed by NAC 362.140.]~~

Sec. 2. NAC 362.368 is hereby amended to read as follows:

362.368 1. 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.

2. If the transaction involves the direct, arms-length sale of the geothermal resource, the gross yield of the geothermal resource equals the proceeds of the sale of the geothermal resource.

3. 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 any electricity, heat or

other by-product of the geothermal resource that is agreed upon by the parties to the sale, less any processing allowance or transportation allowance. If the selling price includes any costs for processing or transportation, the person extracting the geothermal resource shall report those costs on a form prescribed by the Department. The Department shall consider those costs in determining the gross yield of the geothermal resource.

4. In the case of an indirect sale of a geothermal resource that is used to produce electricity, all energy, capacity and other payments received, if any, must be included in the gross yield of the geothermal resource.

5. If the costs associated with the processing allowance or transportation allowance are included in a bona fide arms-length contract, the costs shall be deemed to be an appropriate deduction from the selling price. Such costs may include the negotiated costs for the operation, maintenance and replacement of the plant which are paid by the operator of the field, reduced by any negotiated costs for the operation, maintenance and replacement of the field which are paid by the operator of the plant. The negotiated costs must be set forth in a written contract or other document specified by the Department and may include, but are not limited to:

(a) A negotiated sharing by percentage of the operating and maintenance costs of the field and the plant; or

(b) A negotiated agreement that the operator of the field will pay for necessary improvement to the plant.

6. If the costs associated with the processing allowance or transportation allowance are not included in a bona fide arms-length contract, the Department must consider the following:

(a) The annual total cost of operating and maintaining the plant, transmission line and any other facility or equipment used to transport the geothermal product after all mining functions

and processing are complete, including, but not limited to, any reasonable and prudent costs incurred for direct wages, benefits, workers' compensation, supplies, materials and charges for overhead, general liability insurance incurred because of the plant and transmission line and costs for obtaining and maintaining any permit for a site, permit relating to air quality or any other permit or license required to operate the plant or transmission line. 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 in NAC 362.100 to 362.160, inclusive, the~~ *The* depreciation of the capital investment in the plant and transmission line using the straight-line method over the useful life of the asset established in accordance with the *Personal Property Manual*.

(c) Any charges for wheeling electricity or for loss of power in the transmission line.

(d) Amortization of each long-term contract to purchase power using the straight-line method over the stated life of the contract. Any amount amortized pursuant to this paragraph must not exceed 60 percent of the original book value of the plant and transmission line.

(e) An allowance for return on the investment in the plant and transmission line, calculated by multiplying the cost of acquiring the plant and transmission line, as recorded in the books and records of the operator, by the overall rate of return on capital. The overall rate of return on capital must be based on the appropriate electric industry cost of capital study conducted by the Department pursuant to NAC 361.408 and 361.425.

7. For the purpose of paragraph (e) of subsection 6:

(a) If an agreement for the purchase of power is in effect, the Department may grant an allowance for a return on the investment for a period that is equal to the remaining term of the

agreement or 15 years, whichever is less. If such an agreement is not in effect, the Department may grant the allowance for a period that is equal to the remaining useful life of the plant and transmission line or 15 years, whichever is less.

(b) If the plant or transmission line is repowered or a reinvestment in the plant or transmission line occurs, the taxpayer may apply to the Department for an extension of the allowance specified in paragraph (a). The Department may grant an extension pursuant to this paragraph for a period that is equal to the remaining life of the assets purchased for the repowering or reinvestment or 15 years, whichever is less. The remaining life of those assets must reasonably reflect the useful life of those assets established in accordance with the *Personal Property Manual*.

(c) To calculate the allowance specified in paragraph (a), the Department may require the taxpayer to submit any additional information specified by the Department, including, without limitation:

- (1) A statement setting forth the amount of any recapitalization or repowering of the plant or transmission line;
- (2) A statement setting forth the established life of the assets purchased; or
- (3) An audit of the books and records of the taxpayer.

(d) If the Department grants an extension pursuant to paragraph (b), the amount of the return on the investment must not exceed the amount of the recapitalization or repowering of the plant or transmission line.

8. As used in this section, “*Personal Property Manual*” has the meaning ascribed to it in NAC 361.1361.

Sec. 3. NAC 362.100, 362.110, 362.120, 362.130, 362.140, 362.150 and 362.160 are hereby repealed.

Sec. 4. Sections 1, 2 and 3 of this regulation do not apply to or affect:

1. Any depreciation of assets approved by the Nevada Tax Commission before the effective date of this regulation; or

2. Any powers or duties of the Department of Taxation or any mining operator relating to any depreciation of assets approved by the Nevada Tax Commission before the effective date of this regulation.

TEXT OF REPEALED SECTIONS

NAC 362.100 Eligibility of mining operator for accelerated depreciation. (NRS 360.090, 362.120)

1. A mining operator may petition the Nevada Tax Commission for permission to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment in the accelerated manner prescribed in NAC 362.140 if the mining operator has:

(a) Complied with all applicable provisions of chapter 519A of NRS and the regulations adopted pursuant thereto;

(b) Agreed in writing to extend the time allowed for the Department to file a certificate of delinquency pursuant to NRS 360.420 to the date on which the Department completes a final audit; and

(c) Given public notice that the mining operation will close within 36 months after the date on which the petition is filed with the Commission.

2. The public notice must set forth one or more reasons for the closure and the date on which the closure is expected. The notice must be delivered personally or sent by certified mail to the county commissioners of the county in which the mining operation is located and to the Budget Division of the Department of Administration and:

(a) If the mining company is publicly held, appear in the annual reports which the company is required to provide to the Securities and Exchange Commission and which it provides to its stockholders; or

(b) If the mining company is not publicly held, be sent to all creditors whose money financed the assets for which the company is seeking permission to use the accelerated depreciation method.

NAC 362.110 Filing of petition and accompanying documents. (NRS 360.090, 362.120)

A petition to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment in the accelerated manner prescribed in NAC 362.140 must:

1. Be filed with and approved by the Nevada Tax Commission before the date on which the mining operator is required to file the annual statement required by NRS 362.110.

2. Be accompanied by a copy of each public notice which was sent pursuant to NAC 362.100.

3. Be accompanied by a copy of the plan for reclamation filed with the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

4. If the mining operator filed a plan of operation with the Division of Environmental Protection of the State Department of Conservation and Natural Resources, be accompanied by the plan.

5. Be accompanied by:

(a) A notarized statement which is signed by an officer of the company; or

(b) A copy of the plan for productive use of the land after the mining has stopped, ↪ setting forth the proposed disposition of the leasehold improvements, buildings, fixed machinery and fixed equipment.

NAC 362.120 Temporary closure not acceptable justification for allowance of petition. (NRS 360.090, 362.120) The Nevada Tax Commission will not accept closure of a mining operation because of a temporary change in economic conditions or any other closure of a mining operation which the Commission determines to be temporary as the justification for allowing a petition to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment in the accelerated manner prescribed in NAC 362.140.

NAC 362.130 Permission to depreciate assets granted to specific company only. (NRS 360.090, 362.120) Permission to depreciate assets in the accelerated manner prescribed in NAC 362.140 must be granted to a specific mining company and does not follow any transfer of the assets. For the purposes of this section, a subsidiary or affiliate of a mining company is a separate company.

NAC 362.140 Manner of depreciation. (NRS 360.090, 362.120)

1. If the Nevada Tax Commission grants a petition, the leasehold improvements, buildings, fixed machinery and fixed equipment must be depreciated at the following rates:

<u>Year</u>	<u>Percentage</u>
1.....	10
2.....	20
3.....	30
4.....	40

2. The amount of the remaining depreciation allowed for the asset, less any salvage value not previously subtracted, must be multiplied annually by the allowed percentage beginning on the date on which the first annual statement required by NRS 362.110 is filed after the date on which the petition is granted. The percentage which must be used for the first year of accelerated depreciation is 10 percent whether or not the remaining useful life of the asset is 36 months. If the mining operator acquires leasehold improvements, buildings, fixed machinery or fixed equipment after the petition is granted, such assets must be depreciated in the same manner as the existing assets using 10 percent for the first year of depreciation.

3. The salvage value of an asset must be calculated on the basis of the projected value of the asset at the time of the anticipated disposition. If excess depreciation is taken because a mining operator underestimated the salvage value of an asset, penalties and interest pursuant to NRS 360.417 must be applied to any underpayment of tax resulting therefrom.

4. The mining operator shall credit the decrease in tax liability resulting from the accelerated depreciation against the estimates or final taxes due pursuant to NRS 362.115.

NAC 362.150 Annual audits by Department; requirement of surety. (NRS 360.090, 362.120)

1. The Department may conduct annual audits of any mining operation that is allowed to depreciate its assets in the accelerated manner prescribed in NAC 362.140.

2. If the Department determines that it is possible that the mining operator will continue to process, sell or stockpile the mined product for longer than the agreed time, the Department shall require the mining operator to file a surety with the Department. The surety must be:

(a) Executed by the mining operator as principal and by a corporation qualified under the laws of this State as surety;

(b) Payable to the State of Nevada;

(c) A bond, letter of credit or any other form of security authorized by NRS 100.065; and

(d) Conditioned upon the punctual payment of all taxes on the net proceeds of mines, including all penalties and interest.

3. The total amount of the surety must not be less than the amount the Department determines to be the potential liability for taxes, penalties and interest at the time that the mining operation could continue beyond the date of closure specified in the notice required by NAC 362.100. The mining operator shall file the surety within 30 days after the Department notifies him or her of such a duty.

NAC 362.160 Duties of operator who fails to cease or reopens operation. (NRS 360.090, 362.120) If a mining operator who has been allowed to depreciate assets using the accelerated method fails to cease operations on the date of closure specified in the notice required by NAC 362.100 or at any time reopens the mining operation, the mining operator shall:

1. Notify the Department in writing within 30 days after the date agreed upon or the reopening of operations;
2. Pay to the Department within 30 days after demand the difference between the net proceeds taxes using the straight-line method of depreciation over a 20-year period and the amount paid using the accelerated method for any year in which the accelerated method was used; and
3. Pay to the Department within 30 days after demand penalties and interest pursuant to NRS 360.417.