

NEVADA TAX COMMISSION MEETING
MINUTES

April 21, 2023
10:00 a.m.

Members Present:

Tony Wren, Chairman
Ann Bersi, Commissioner
Francine Lipman, Commissioner
Jeff Rodefer, Commissioner
Randy Brown, Commissioner
H. Stan Johnson, Commissioner
Sharon Byram, Commissioner
Craig Witt, Commissioner

- I. Call the meeting to order and establish a quorum.

Chairman Wren called the meeting to order. A quorum was established.

- II. Public Comment.

There was no public comment.

- III. Governor Lombardo's Executive Order 2023-003 requiring Executive Branch boards to freeze issuance of new regulations, conduct a comprehensive review of existing regulations, and prepare a report to the Governor's Office by May 1, 2023, recommending at least 10 regulations for removal and any other regulations that can be streamlined, clarified, reduced or otherwise improved.

The following staff were present on behalf of the Nevada Department of Taxation:

Yvonne Nevarez-Goodson, Chief Deputy Executive Director
Jennifer Roebuck, Deputy of Compliance
Jeffrey Mitchell, Deputy of Excise and Local Government Services
Guy Childers, Tax Manager (Audit)
Edna Bonilla, Tax Manager (Revenue)
Jo Lynn Smith, Tax Manager (Excise)
Sarah Glazner, Management Analyst III (Executive Review)

Chief Deputy Nevarez-Goodson presented this agenda item to the Commission, identifying 3 separate lists for consideration by the Commission to amend or repeal various provisions of the Nevada Administrative Code under the jurisdiction of the Commission. Chief Deputy Nevarez-Goodson noted that Department staff prepared recommendations and conducted a public workshop with taxpayers and stakeholders regarding the following provisions outlined on 3 separate lists:

- 1) List Number One (Recommendations for Repeal)
- 2) List Number Two (Recommendations for Amendment)
- 3) List Number Three (Proposed Amendments by Stakeholders with Department Responses)

List Number One (Recommendations for repeal):

Overview:

- Recommendation presented by the Department and public stakeholders to recommend to the Governor the repeal of the NAC provisions identified on List Number One.

Mary Ann Weidner was present on behalf of the Clark County Assessor's Office.

George Hritz, with the Nevada Taxpayers Association ("NTA"), commented regarding the recommendation for repeal of NAC 372.110. With respect to a lock and seizure of a business and an auction Mr. Hritz asked whether the prior owner bidding on an item would be considered double taxation. Guy Childer, Tax Manager, stated he believed it would be two separate transactions.

Motion: Commissioner Rodefer moved to approve the recommendations in List Number One as presented by the Department, with the exception of moving NAC 490.010, 490.020, 490.040 and 490.050 to List Number Two for amendment instead of repeal. Commissioner Bersi seconded the motion. All in favor. Motion carried.

List Number One – Recommended for repeal: The Following provisions are recommended for repeal: NAC 360.373 (R098-22), 360.377 (R098-22), NAC 360.432, NAC 360.476, 360.477, NAC 360.478, NAC 360.4785, NAC 360.479, NAC 361.044, NAC 361.052, NAC 361.054, NAC 361.056, NAC 361.058, NAC 361.1315, NAC 361.150, NAC 361.151, NAC 361.427, NAC 361.61062, NAC 362.035, NAC 362.050, NAC 362.310, NAC 363A.350, NAC 363C.220, NAC 370.020, NAC 370.140, NAC 370.150, NAC 370.250, NAC 370.510, NAC 370.520, NAC 372.110, NAC 372.240, NAC 372.290, NAC 372.300, NAC 372.400, NAC 372.715, NAC 375A.010, NAC 375A.020, NAC 375A.030, NAC 680B.150, NAC 680B.160, NAC 680B.170, NAC 680B.180, NAC 680B.190, NAC 680B.200, NAC 680B.210, NAC 680B.220, NAC 680B.230, NAC 680B.240, and NAC 680B.250

List Number Two (Recommendations for amendment):

Overview:

- Recommendation presented by the Department and public stakeholders to recommend to the Governor the amendment of the NAC provisions identified on List Number Two with the following changes:
 - o Include the amendment of NAC 490.010, 490.020, 490.040 and 490.050 to move those provisions under the authority of the Department of Motor Vehicles (DMV) or Commission on Offroad Vehicles, as appropriate;
 - o Pull the proposed amendments to NAC 372.101 and 360.700 from consideration on the list; and
 - o Move the proposed amendment for NAC 372.938 to list number three for discussion.

Public Comment:

Josh Hicks with McDonald Carano and serving as the Chair of the NTA: The memo from the Department regarding NAC 360.050 says that the regulation will be amended to include debit and credit card payments. The NTA had also asked for electronic funds transfers to be added. Chief Deputy Nevarez-Goodson stated that the proposed amendment includes electronic funds transfer, credit and/or debit card. With respect to NAC 360.700, Mr. Hicks recommended eliminating the proposed amendment from "will" to "may", if it really doesn't mean anything. With respect to NAC 360.706, Mr. Hicks agreed that the Department's recommendation would be helpful to taxpayers. Mr. Hicks recommended that NAC 372.101 regarding delivery, needs to be examined carefully because even a markup could be a cost to the taxpayer. Specifically, Mr. Hicks suggested that simply listing it as the

actual cost and not defining what that means could be problematic. However, Mr. Hicks stated he was not opposed to this being a recommendation but needs some careful inspection to make sure it is done right.

Motion: Commissioner Byram made a motion to approve the proposed amendments outlined in List Number Two for recommendation to the Governor, with the following exceptions:

- 1) Include amendments of NAC 490.010, 490.020, 490.040 and 490.050 to move those provisions under the authority of the DMV or Commission on Offroad Vehicles, as appropriate;
- 2) Pull NAC 372.101 from consideration for amendment;
- 3) Eliminate the word change from “will” to “may” in NAC 360.700(2) regarding the estimated date by which an audit will be completed; and
- 4) Move NAC 372.938 to List Number Three.

The Motion was seconded by Commissioner Rodefer. All in Favor. Motion carried.

List Number Two (Recommended for amendment): The following provisions are recommended for amendment: NAC 360.043, NAC 360.045, NAC 360.050, NAC 360.055, NAC 360.058, NAC 360.060, NAC 360.095, NAC 360.135, NAC 360.365, NAC 360.368, NAC 360.370, NAC 360.390, NAC 360.396 (R158-22), NAC 360.425, NAC 360.435, NAC 360.440 (R152-22)(R157-22), NAC 360.444, NAC 360.446, NAC 360.468, NAC 360.470, NAC 360.472, NAC 360.474, NAC 360.4743, NAC 360.4745, NAC 360.475, 360.4765, NAC 360.4775, NAC 360.480 (R149-22), NAC 360.485, NAC 360.588, NAC 360.700 (R157-22), NAC 360.706, NAC 361.1295, NAC 361.131 (R192-22), NAC 361.6015, NAC 361.6055, NAC 361.61034, NAC 361.6107, NAC 363C.210 (R057-21), NAC 368A.110 (R056-21), NAC 363A.130, NAC 370.165 (R100-22), NAC 370.230, NAC 370.500, 370.540, 370.545, 370.550, 370.555, 370.580, 370.585, 370.590, and 370.595, 372.280, 372.320, 372.350 (R156-22), and 372.460 (R172-22), NAC 372.607 and 372.700 (R150-22), NAC 372.720, 372.770, 372.780, NAC 372.908, 372.910, NAC 372B.100, 372B.200, 372B.210, 372B.220, 372B.230, NAC 490.010, NAC 490.040, and NAC 490.050.

List Number Three:

Commissioner Byram disclosed that she is a member of the NTA Board. She stated that she hasn't discussed this matter with the Board, or anybody, but offered to recuse herself. Chairman Wren stated he didn't think that it was necessary if it hasn't been discussed.

Commissioner Brown disclosed that he is a former board member of the NTA, and his employer is a current member of the NTA. He stated he also hasn't had any conversations with the organization regarding these matters.

NAC 360.055 (ALJ Hearing Calendars):

Overview:

- Existing regulation, in part, requires the Department to maintain a hearing calendar and post it at the offices of the Department.
- NTA's Request: To post the Hearing Calendar on Department's Website.
- Department's Response: Disagrees with the NTA's recommendation, as Administrative Law Judge Hearings are confidential.

Public Comment:

Josh Hicks, on behalf of the NTA, stated he is not interested in confidential matters, just an overall understanding of the business of the Commission, including the number of cases, and when they will be heard, etc.

George Hritz, on behalf of the NTA, noted that the hearing calendar is also posted in the Office of the Department.

Motion: A motion was made by Commissioner Lipman to approve the recommendations by the Department that we do not post these confidential hearings on the Department's website. Motion was seconded by Commissioner Rodefer. All in Favor. Motion carried.

NAC 360.130 (Tax Commission Hearings – Recordings; Transcripts)

Overview:

- Existing regulation relates to hearings on petitions for redetermination and places the burden of proof in an evidentiary hearing on the taxpayer for such a hearing.
- Ron Voigt submitted written comment and requested to change the burden of proof from the taxpayer to the Department during redetermination.
- Department's Response: Disagrees, as burden on redetermination should remain on the taxpayer consistent with all other provisions related to redeterminations.

Public Comment:

Ron Voigt submitted written public comment.

Mary Ann Weidner with the Clark County Assessor's Office was present and stated she was not sure how this particular statute impacted any of the counties or the State Board of Equalization's hearings, but if it does coincide with those particular hearings, the burden of proof typically resides with the taxpayer to prove that the values are incorrect, and so she would support the Department's position on this.

Motion: A motion was made by Commissioner Lipman to approve the Department's recommendation and disagreement with changing the burden of proof under NAC 360.130. Motion was seconded by Commissioner Rodefer. All in Favor. Motion carried.

NAC 360.170: (ALJ Decisions – Decision timelines and prevailing party status)

Overview:

- Existing regulation requires a hearing officer to prepare and serve written findings of fact and conclusions of law, or the final decision on the issues presented in the hearing upon all parties of record and members of the Commission within 60 days after the date of the hearing.
- NTA Request: Deem the taxpayer to have prevailed on the merits of their argument on a petition for redetermination if the decision is not issued within 60 days
- Department's Response: Disagrees, as the Commission has previously declined to adopt this recommendation and it would serve as a windfall to the taxpayer on substantive issues. However, the Commission's regulations provide for a waiver of interest in certain circumstances and if there is a delay in issuing an opinion that

causes damages to the Taxpayer in the form of additional interest owed, the taxpayer may seek a waiver of that interest.

Public Comment:

Josh Hicks on behalf of NTA: Understands that the recommendation is aggressive but believes the taxpayer deserves timely decisions.

George Hritz on behalf of NTA: The regulations have the force of law and recommends we at least amend the regulation to require the written decision within 90 or 120 days rather than 60 days under current regulation.

Mary Ann Weidner on behalf of the Clark County Assessor's Office. Ms. Weidner stated she is unsure how this effects hearings for abatement appeals. If this would impact those types of hearings, she would be opposed to the language that was recommended and would uphold the Department's recommendation.

Commissioner Rodefer inquired of the Department staff how often this occurs. Sarah Glazner, the Department's Management Analyst III, indicated her recollection of only two late decisions in over a year, in which the ALJ/Hearing decision itself waived any interest accrued as a result of the delayed decision.

Commissioner Brown noted that other agencies such as the Public Utilities Commission have regulations imposing deemed approvals upon expiration of dates.

Commissioner Rodefer indicated that a tax matter should not be resolved on a technicality.

Commissioner Lipman and Commissioner Byram agreed that the NTA's recommendation was extreme but contemplated whether an amendment would be prudent to confirm that any delay should result in an automatic waiver of interest during the delayed issuance of the decision after the 60 days.

Commissioner Rodefer commented that such a decision would be better considered under a different process than that contemplated under this Executive Order.

Motion: A motion was made by Commissioner Lipman to uphold the Department's response to the NTA's request regarding NAC 360.170. The motion was seconded by Commissioner Bersi. All in Favor. Motion carried.

NAC 360.175 (Posting of NTC Decisions on Website):

Overview:

- Existing regulation relates to the appeal of a decision of a hearing officer to the Nevada Tax Commission. The Commission may modify, reverse or affirm the decision of the hearing officer or remand it to the hearing officer. The Commission must issue a final written decision.
- NTA's Request: To require the Commission to post all written decisions on its website.
- Department's Response: No official position other than to note that the Commission has previously declined to publish all decisions because its decisions do not constitute binding precedent for other taxpayers and they are resolutions of contested cases.

Public Comment:

Josh Hicks, on behalf of NTA, acknowledged that decisions are not binding precedent, but could be helpful to have insight into how the Commission views the issues and believes that the Taxpayers' Bill of Rights requires taxpayers to be treated consistently and equitably.

George Hritz, on behalf of NTA, agreed with Mr. Hicks.

Commissioner Rodefer noted that it could be beneficial to have a log of all NTC decisions available to practitioners and taxpayers, but it would cause a significant staffing issue to accommodate this request.

Motion: A motion was made by Commissioner Bersi not to amend NAC 360.175. The motion was seconded by Commissioner Lipman. All in Favor. Motion carried.

NAC 360.185 (Interpretation of NRS 360.395 for Judicial Review):

Overview:

- Existing regulation relates to rehearings or reconsiderations of the decisions of the Commission by an aggrieved party. Failure of an aggrieved party to seek reconsideration does not affect the person's right to file a petition in the district court. Any decision of the Commission on reconsideration is the final decision for purposes of judicial review.
- NRS 360.395 mandates that a taxpayer either 1) pay the amount of the determination or 2) enter into a written payment plan with the Department, before seeking judicial review. Any later finding by a court that the Commission's final order should be reduced or that the person does not owe any taxes, the Department shall credit or refund the amount to the taxpayer.
- NTA Request: Add a new subsection to interpret the statutory mandate set forth in NRS 360.395 as to allow a taxpayer to seek judicial review without payment or a payment plan, but acknowledge the obligation to pay if judicial review is unsuccessful.
- Department's Response: Disagrees as the statutory requirements are jurisdictional and rooted in case law and interpretations that prohibit taxpayers from filing cases to enjoin the collection of the tax. Any such change should require legislative change, and the Commission should not interpret away its jurisdictional posture.

Public Comment:

Josh Hicks, on behalf of NTA, believes that NRS 360.395 is a barrier to taxpayers seeking judicial review which affects small businesses and believes an interpretation which would allow the taxpayer to acknowledge the obligation to pay is a reasonable interpretation of the statute.

The Department's legal counsel, Chief Deputy Attorney General David Pope, advised the Commission regarding the prohibition against injunctions or other lawsuits to enjoin the collection of a tax.

Mary Ann Weidner, on behalf of the Clark County Assessor's Office, mentioned court cases that have gone to the Supreme Court three times over the last ten years. She suggested that there are cases that can extend over lengthy periods of time which may impact the Commission's decision on this matter.

Motion: A motion was made by Commissioner Byram to decline the recommendation by the NTA on NAC 361.185. The motion was seconded by Commissioner Lipman. All in Favor. Motion carried.

NAC 361.1177 (Adoption of Certain Publications – Property Appraisals):

Overview:

- Existing regulation governs the adoption by reference of various property appraisal publications and standards.
- Clark County Assessor Suggestion: Take out references to specific publications as they may become outdated and just contact the Department for appropriate reference materials
- Department's Response: Recommend no changes at this time based on subsections 2 and 3 which govern modifications and notice of revisions to such publications, and hold further discussion/workshops to make such changes.

Public Comment:

Mary Ann Weidner, with the Clark County Assessor's Office, stated their recommendation pertained to the dollar value that was placed on the price of the publications. She confirmed that the County had no problem with the publications as they are important for how we govern appraising properties.

Motion: Commissioner Byram made a motion to deny the recommendations presented by the Clark County Assessor to amend NAC 361.1177. The motion was seconded by Commissioner Lipman. All in Favor. Motion carried.

NAC 372.200 (Construction contractors – tangible personal property purchases):

Overview:

- Existing regulation governs construction contractors and taxability of tangible personal property purchased for the performance of a contract.
- Ron Voigt Request: Suggests returning to prior version of this regulation or include language that a construction contractor who uses a resale certificate to purchase materials does not automatically make the construction contractor a retailer - and that how the material is used is determinative for how it is to be reported.
- Department Response – Disagrees, based upon the following:
 - In Nevada, businesses serving in a sole capacity as a contractor are considered consumers of everything they purchase, including tools or materials, because these are not for resale. Rather, they are used as attachments to real property or used by the business and are not taxable for sales tax. Accordingly, contractors should generally be registered with the department for consumer use tax. If they are not a retailer, they should not provide a resale certificate to vendors.
 - Alternatively, businesses that do not act solely as contractors, but also as retailers, repairmen or manufacturers means they can register as a retailer and obtain a sales tax permit. In this role, they use a resale certificate to indicate the possible retail sale transaction.
 - Complications arise when these businesses serve in multiple roles and need to determine which role is being performed at a given time.
 - A retailer is not a consumer making retail sales of items in his inventory.
 - A repairman can be both a retailer or a consumer depending on whether the tangible personal property used and sold is substantial or insubstantial to the overall charge

- As a manufacturer, the materials purchased are generally incorporated into a finished product that retail or sale at wholesale to another business.

Public Comment: Ron Voigt submitted written public comment.

Motion: A motion was made by Commissioner Byram to decline the recommendation as it related to NAC 372.200. Commissioner Bersi seconded the motion. All in Favor. Motion carried.

NAC 372.605 (Prepared food intended for immediate consumption)

NAC 372.607 (Food sold at retail with eating utensils provided by seller):

Overview:

- Existing regulations interprets the term “prepared food intended for immediate consumption referencing definitions in NRS 360B.460 describing separate typos for prepared food and excludes certain food.
- Existing regulation interprets whether food sold at retail is exempt under NRS 360B.460 and NAC 372.605 and refers to food sold with eating utensils –
 - Department feedback: this section addresses concept of food for human consumption that is not prepared food for immediate consumption when it considers “provision of utensils”.
- Ron Voigt Request: Return the language to pre-Streamline Sales and Use Tax Agreement requirements or alternatively add interpretation that SSUTA does not relate to taxability. The regulations should provide an exhaustive list of items to give guidance to the public rather than allow the Department to interpret which foods are taxable as prepared food for immediate consumption.
- Department Response: Disagree – Nevada is subject to SSUTA which necessitated the changes to this regulation to achieve compliance when NRS 372 and 360B were amended. These definitions came from SSUTA’s library of definitions. Based on the new statutory requirements, the prepared food intended for immediate consumption is taxable. Given the breadth of foods that meet the definition, an exhaustive list would be unreasonable the regulations complies with SSUTA.
 - Intention is that product is prepared with intention of being consumed contemporaneously with the purchase, but doesn’t require it to be immediately consumed.
 - Example: buying a hot and now pizza could consume it at time of purchase or wait to consume it until later having no effect on its taxability at the time of purchase.
 - Comparatively, rock solid frozen yogurt is not consumable at time of purchase but must wait for consumption – and is not taxable.

Public Comment: Ron Voigt submitted written public comment.

Motion: A motion was made by Commissioner Lipman to uphold or not to modify NAC 372.605 and NAC 372.607. Motion was seconded by Commissioner Bersi. All in Favor. Motion carried.

NAC 372.938 (Sales Tax on Lease/Rentals of Personal Property):

Overview:

- Existing regulation defines leases as sales consistent with statutory requirements and imposes a sales tax on the lease or rental of tangible personal property upon

the person who leases or rents the property from the retailer. The sales tax shall be measured by the gross lease or rental charges or the cost of that property to the retailer.

- Under the existing regulation, a retailer who elects to pay the tax measured by the gross lease or rental charges by this section is not required to pay the sales tax for the purchase.
- Public Stakeholders Request: NTA, Nevada Chapter of the National Federation of Independent Businesses, A Track-Out Solution, Olcese Construction Co. (via McDonald Carano/Paul Bancroft), and Ron Voigt.
 - Revise NAC 372.938 §3 to allow the retailer to pay tax on the cost or on the lease/rental charges based on whether a resale certificate is provided. Whether a resale certificate has been provided is the determining factor.
 - Repeal the deemed election NAC 372.938 §3.
 - Choose the measure consistent with the practice of the taxpayer's industry.
 - Allow election at any time.
 - Eliminate the deemed election and allow taxpayer to file late return.
 - The commonality among the suggestions regarding NAC 372.938 §3: repeal or revise, allowing the election to pay use tax on the cost at any time, paying applicable penalty and interest on the tax. Further, there are two proposals for taxpayers that do not pay the tax up front:
 - Allow taxpayer to pay use tax at any time with applicable penalty and interest as a consumer, consistent with its industry, without defaulting to sales tax on lease stream.
 - Allow taxpayers to pay use tax at any time with applicable penalty and interest as a consumer, regardless of its industry, without defaulting to sales tax on lease stream.
- Department's Response: Disagrees as follows:
 - Some of the proposed revisions would remove the deadline of an election to pay sales or use tax up front. The net effect of such a revision is the taxpayer could select the lesser of the two deficiencies. Department concerns:
 - The Executive Order requires review to determine whether the regulations may be "...streamlined, clarified, reduced or otherwise improved to ensure those regulations provide for the general welfare of the State without unnecessarily inhibiting economic growth." This revision would complicate the regulation rather than simplify.
 - The proposed revisions would cause compliance inconsistency:
 - Defining and/or following "industry standard" would add levels of complexity to taxpayer service and auditing for compliance.
 - Determining whether a resale certificate was provided is overly burdensome for taxpayers and the Department, entangling other retailers in an audit of their customers.
 - The proposed revisions would negatively impact the taxpayers in the rental industry who have adapted to file correctly. There is a perceived disadvantage where one business charges sales tax and another does not. A customer may favor renting from a business that does not charge sales tax over another business that does charge sales tax. The customer would have no way of knowing whether their selected rental was taxed on the original purchase. Although Department officers and employees do not decide the law, the revision may be perceived as a possible violation of the Taxpayer Bill of Rights where some do not pay their fair share of taxes:
 - "The Legislature has declared that each taxpayer has the right: To be treated by officers and employees of the Department with courtesy,

fairness, uniformity, consistency and common sense.” (NRS 360.291)

- The proposed revisions could enable tax avoidance strategies or loopholes. For example, a lessor purchases equipment without paying sales or use tax and does not charge sales tax on the lease stream. A taxpayer could wait until just prior to the total of the tax, penalty and interest on the cost is about to surpass the total of the sales tax on the lease stream and then pay. Meanwhile the State has been shorted the tax while the lessor waits it out.
- The existing and proposed revisions are burdensome for taxpayers and the Department’s efforts to provide compliance assurance in a specific industry.
- Nevada’s statute of limitation is 3 years from filing a return or 8 years for unfiled return periods. (NRS 360.355) There are a few complexities that will arise if the subsection is repealed. To illustrate, here are some potential scenarios:
 - Taxpayer is a monthly reporter in Nevada and purchases equipment for \$100,000 on 1/01/2023 with intention to rent by the day. As of 6/30/2023, the taxpayer has grossed \$200,000 in rental revenue for the equipment. It did not pay the tax on the cost nor charge and remit sales tax on the rental.
 - The current law requires sales tax assessment with penalty and interest on the rental as retail sales.
 - The suggested revision would allow the taxpayer to either pay tax on the cost or on the rental as retail sales, with applicable penalty and interest. The taxpayer could simply select the lesser of the two deficiencies.
 - Taxpayer is a monthly reporter and purchases equipment on 1/01/2010 with intention to rent by the day. As of 6/30/2023, the taxpayer did not pay the tax on the cost nor charge and remit sales tax on the rental.
 - The law requires sales tax assessment with penalty and interest on the rental as retail sales for the past 3 years.
 - The suggested revisions would allow the taxpayer to either pay tax on the cost or on the rental as retail sales, both with penalty and interest. The original purchase is out of statute, so there would be a question of whether the taxpayer would be liable for the tax at all with the option to select the lesser of the deficiencies.
- Currently it is impossible for customers to reliably ascertain whether sales or use tax was paid by the lessor on tangible personal property. For example, on one rental, a customer might see sales tax on an invoice, but on a rental of a similar item from a different retailer, the customer might see no sales tax on the invoice.
- NAC 372.924 applies to tangible personal property purchased on or before June 15, 2005. It provided an election for the lessor to pay tax on the use, measured by the rental charges, as long as the lessor notified the Department within 10 days of acquisition or on an annual basis.
- Neither NAC 372.924 nor NAC 372.938 are customer or taxpayer friendly.
- In any other retail sale, it is unlawful for a retailer to hold out that sales tax is absorbed by the retailer, and the tax must be stated separately from the sales price. (NRS 372.115; 372.120 and NAC 372.770)

Public Comment:

Josh Hicks on behalf of McDonald Carano Law Firm: In addition to his written public comment, his firm has three taxpayers that this section is currently affecting resulting in deficiency determinations and believes several taxpayers are caught in this difficult regulation.

George Hritz on behalf of the NTA: He believes that the Commission should interpret a regulation in line with the following: 1) the intent of the taxpayer; 2) whether the taxpayer was unjustly enriched; and 3) whether the State is made whole.

Paul Bancroft on behalf of McDonald Carano Law Firm: Acknowledging the firm's three clients that have had a problem with this election and encourages the Commission to accept the recommended amendment. Mr. Bancroft encouraged the Commission to submit the proposed amendment to the Governor.

The Department's Legal Counsel, Chief Deputy Attorney General David Pope advised the Commission not to discuss any pending cases in relation to this policy discussion.

Motion: Commissioner Lipman made a motion to leave NAC 372.938 unchanged and to not adopt the recommendations at this point from the stakeholders or the Department. Commissioner Rodefer seconded the motion. All in favor. Motion carried.

List Number Three: None of the requested amendments were approved by the Commission to amend the following provisions: NAC 360.055, NAC 360.130, NAC 360.170, NAC 360.175 and NAC 360.185, NAC 361.1177, NAC 372.200, NAC 372.605, NAC 372.607, NAC 372.938

Final motion: Motion by Commissioner Rodefer for the Department to prepare a report outlining these recommendations to the Governor's Office on or before May 1, 2023, as required by Executive Order 2023-003. Motion was seconded by Commissioner Witt. All in favor. Motion carried.

IV. Next Meeting Date: May 1, 2023

V. Public Comment.

Josh Hicks offered final public comment of appreciation to the Commission for considering these recommendations and for the professionalism of Department staff in preparing these materials. He looks forward to working with the Department and Commission on some of these issues when there is more time to fully consider them.

VI. Meeting adjourned.