



STATE OF NEVADA
DEPARTMENT OF TAXATION

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NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of

LCB File No. R152-22

Nevada Tax Commission

The Nevada Tax Commission will hold a Public Hearing at **9:00 a.m.** on **Tuesday, June 25, 2024**. The purpose of the hearing is to receive comments from all interested parties regarding the adoption of the regulation that pertains to LCB File No. R152-22.

You may attend this meeting at either of the following physical locations:

Nevada Department of Taxation
700 E. Warm Springs Road, 1st Floor
Las Vegas, Nevada 89119

Nevada Department of Taxation
4600 Kietzke Lane, Suite L235
Reno, Nevada 89502

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Need and purpose of the proposed regulations or amendments

Proposed permanent regulation R152-22 revises provisions relating to the voluntary disclosure of a taxpayer's failure to file a tax return with the Department of Taxation; authorizes the Executive Director of the Department or a person designated by the Executive Director to extend the time for completion of an application for voluntary disclosure; transfers from the Nevada Tax Commission to the Department the responsibility of determining the sufficiency of such an application and the amount of any tax, penalty or interest owed by the taxpayer; and provides other matters properly relating thereto.

Existing regulations provide that a taxpayer who fails to file a tax return with the Department of Taxation pursuant to various provisions of statute, and who wishes to voluntarily disclose that fact to the Nevada Tax Commission, must file with the Department an application for voluntary disclosure. Any such application must be filed before the Department has initiated an audit or investigation of the taxpayer. (NAC 360.440) **Section 1** of this regulation provides for the “completion” of an application for disclosure through the filing of any required registration and delinquent tax returns for the period being disclosed, the payment of the tax estimated to be owed for that period and the submission of any additional information or material required by the Department. Under specified circumstances, **section 1** also authorizes the Executive Director of the Department or a person designated by the Executive Director to grant an extension of time for the completion of an application. **Section 2** of this regulation makes conforming changes and transfers, from the Commission to the Department, the responsibility for determining whether the tax liability of a taxpayer has been voluntarily disclosed.

Under existing regulations, if the Commission determines that a taxpayer has made a good faith effort to comply with the requirements for voluntary disclosure, the Department is prohibited from assessing the penalty and interest otherwise prescribed by statute on the entire amount of the taxpayer’s tax liability. If the Commission determines that the taxpayer’s tax liability has not been voluntarily disclosed, the Department is required to assess the prescribed penalty and interest on the entire amount of that liability. A taxpayer who wishes to dispute the assessed penalty or interest must file a petition with the Executive Director for consideration and action by the Commission. (NAC 360.446) **Section 3** of this regulation transfers the various administrative duties imposed by existing regulations from the Commission and the Executive Director to the Department. **Section 3** further clarifies that any action taken by the Department under its authority does not affect the right of a taxpayer to request a waiver or reduction of a penalty or interest, or both, pursuant to regulatory provisions that authorize the Department to grant such a waiver or reduction in extenuating circumstances.

2. How to obtain the approved or revised text of regulations prepared by LCB

You may obtain a copy of the proposed permanent regulation by writing to the Nevada Department of Taxation, 3850 Arrowhead Drive, 2nd Floor, Carson City, Nevada 89706; or by calling the office at (775) 684-2059. The proposed permanent regulation is also available for review and download on the Department of Taxation website at <https://tax.nv.gov/> or on the Nevada Legislature website at <https://www.leg.state.nv.us/>.

3. Methods used in determining the impact on a small business

The agency used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulation changes, which confirms that the changes to the voluntary disclosure process set forth in this regulation do not substantively impact Nevada businesses. The Department prepared a small business impact questionnaire that was forwarded to the Interested Parties List which is maintained by the Department.

The Department will continue to accept input on the impact of the proposed permanent regulation on small businesses through the regulatory process. No respondents indicated that this regulation would have a direct and significant economic burden upon a small business.

The Department held a workshop for concerned members of the public to state their concerns and submit correspondence regarding the regulation. The Nevada Taxpayers Association presented public comment and recommendations to ensure that taxpayers’ rights to payment plans, offers in compromise

or other avenues to pay tax liabilities was not compromised by the regulation. The Department confirmed those are separate processes outside of the voluntary disclosure process, and any taxpayer who enters into these plans or compromises and satisfies the tax liability has the right to seek a waiver of penalty and/or interest under existing regulations. It was further clarified that any final decisions of the Department affecting the taxpayers' rights are subject to appeal to the Nevada Tax Commission.

4. Estimated economic effect of regulation on businesses and the public

a. Adverse and beneficial effects

The proposed permanent regulation does not present any reasonable, foreseeable or anticipated adverse economic effects on small businesses or the public.

b. Immediate and long-term effects

The proposed permanent regulation does not present any reasonable, foreseeable or anticipated immediate or long-term economic effects on small businesses or the public.

5. Cost for enforcement of the regulations

The proposed permanent regulation does not present any significant, foreseeable or anticipated cost or decrease in costs for enforcement.

6. Overlap or duplication of other state or local governmental agencies

The proposed permanent regulation does not overlap or duplicate any regulation of other state or local governmental entities.

7. Regulation required by federal law

Not Applicable

8. More stringent than federal regulations

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

9. New or increases in existing fees

The proposed permanent regulation does not include new fees or increase an existing fee.

Persons wishing to comment on the proposed action of the Nevada Tax Commission may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Tax Commission, 3850 Arrowhead Drive, 2nd Floor, Carson City, Nevada 89706. Written submissions must be received at least two weeks prior to the above scheduled public hearing.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.

A copy of the Notice and the proposed permanent regulation to be adopted and/or amended is on file and has been posted at the following location: The Department of Taxation - 3850 Arrowhead Drive, 2nd Floor, Carson City, Nevada 89706.

Members of the public may inspect these documents during regular business hours at the above location. Additional copies of the notice and proposed permanent regulation to be adopted and/or amended are available at the below locations.

The text of the proposed permanent regulation will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Notice has been EMAILED/MAILED for posting at the following locations: Department of Taxation - 4600 Kietzke Lane, Building L, Ste 235, Reno, Nevada; Department of Taxation - 700 E. Warm Springs Rd, Ste 200, Las Vegas, Nevada; The Legislative Building - Capitol Complex, Carson City, Nevada; The Nevada State Library -100 Stewart Street, Carson City, Nevada; Interested Parties Group; and the Mailing List maintained by the Department. Notice of this meeting was posted on the Department of Taxation website at <https://tax.nv.gov/>, on the Legislative website at <https://www.leg.state.nv.us/>, and the Nevada Public Notice Website at <https://notice.nv.gov/>.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations to participate in this hearing should notify Tina Padovano at 775-684-2096 or tpadovano@tax.state.nv.us at least 3 days before the hearing. In order to comply with the security procedures of the Department, you will be required to show identification and sign a visitor's log prior to entering the meeting room.

If you need an accommodation in order to communicate during the hearing, the Department will provide one at no cost to you. Arrangements for an interpreter should be made as soon as possible, but no later than 14 days before the scheduled meeting. Please contact Tina Padovano at 775-684-2096 at least 14 days in advance to request an interpreter in your preferred language. You may also submit your request to tpadovano@tax.state.nv.us.

Si necesita una ayuda para comunicarse durante la audiencia, el Departamento se lo proporcionará sin costo alguno. Los trámites para conseguir un intérprete deben hacerse lo antes posible, pero a más tardar 14 días antes de la cita programada. Por favor, póngase en contacto con Tina Padovano al 775-684-2096 con al menos 14 días de anticipación para solicitar un intérprete en su idioma de preferencia. También puede solicitarlo a través de tpadovano@tax.state.nv.us.

**REVISED PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R152-22

April 23, 2024

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

AUTHORITY: §§ 1 and 2, NRS 360.090; § 3, NRS 360.090 and 360.300.

A REGULATION relating to taxation; revising provisions relating to the voluntary disclosure of a taxpayer’s failure to file a tax return with the Department of Taxation; expanding the applicability of those provisions to include taxpayers subject to certain additional taxes and fees; transferring from the Nevada Tax Commission to the Department the responsibility for determining in the first instance whether the tax liability of a taxpayer has been voluntarily disclosed; revising the requirements to be met by a taxpayer or the taxpayer’s representative before the Department may make a determination of voluntary disclosure; authorizing the Executive Director of the Department or a person designated by the Executive Director to extend the time for complying with those requirements; requiring a taxpayer whose tax liability has been determined not to have been voluntarily disclosed to file any additional returns and pay any tax, penalty or interest determined to be owed; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing regulations provide that a taxpayer who fails to file a tax return with the Department of Taxation as required by various provisions of law, and who wishes to voluntarily disclose that fact to the Nevada Tax Commission, must file with the Department an application for voluntary disclosure. Any such application must be filed before the Department has initiated an audit or investigation of the taxpayer. (NAC 360.440) **Section 1** of this regulation expands the applicability of those provisions to include, without limitation, taxpayers who are subject to the modified business tax, the tax imposed on the gross revenue of gold and silver mining businesses, the taxes imposed on transportation network companies and other passenger carriers and the taxes and fees imposed in connection with the operation of peer-to-peer car sharing programs. **Section 1** also sets forth the requirements that must be complied with by a taxpayer or the taxpayer’s representative before the Department may consider the tax liability of the taxpayer to have been voluntarily disclosed, and provides that those requirements must generally be met within 90 days after notice is given by the Department of its acceptance of the taxpayer’s application for voluntary disclosure. Under those provisions, the taxpayer or the taxpayer’s representative must file any required registration and delinquent tax returns for the period being disclosed, pay the tax estimated to be owed for that period and submit any additional information or material required by the Department. Under specified circumstances, **section 1** also authorizes

the Executive Director of the Department or a person designated by the Executive Director to grant one extension of time for compliance with those requirements. **Sections 2 and 3** of this regulation make conforming changes and transfer, from the Commission to the Department, the responsibility for determining in the first instance whether the tax liability of a taxpayer has been voluntarily disclosed.

Under existing regulations, if the Commission determines that a taxpayer has made a good faith effort to comply with the requirements for voluntary disclosure, the Department is prohibited from assessing the penalty and interest otherwise prescribed by statute on the entire amount of the taxpayer's tax liability. If the Commission determines that the taxpayer's tax liability has not been voluntarily disclosed, the Department is required to assess the prescribed penalty and interest on the entire amount of that liability. A taxpayer who wishes to dispute the amount of the assessed penalty or interest must file a petition with the Executive Director for consideration and action by the Commission. (NAC 360.446) **Section 3** eliminates the "good faith effort" language from the existing provisions. If the Department determines that the taxpayer's tax liability has not been voluntarily disclosed, **section 3** requires the Department to notify the taxpayer of that determination and issue a bill for the amount of any tax, penalty or interest owed by the taxpayer. In such a case, **section 3** also: (1) requires the taxpayer to file any additional returns and pay any tax, penalty or interest determined to be owed; and (2) provides that the taxpayer may file a petition with the Department, for review by the Commission, disputing the Department's determination or the amount of any tax, penalty or interest assessed by the Department. **Section 3** further clarifies that any action taken by the Commission or Department under their authority does not affect the right of a taxpayer to request a waiver or reduction of a penalty or interest, or both, pursuant to regulatory provisions that authorize the Department to grant such a waiver or reduction in extenuating circumstances.

Section 1. NAC 360.440 is hereby amended to read as follows:

360.440 1. If a taxpayer fails to file a return as required by the applicable provisions of chapter 360, **360B**, 362, **363A**, **363B**, 363C, **363D**, 369, 370, 372, 372A, **372B**, 374, 377, 377A , **377C** or 444A of NRS, NRS 482.313, **482C.230**, **482C.240**, or chapter 585 or 680B of NRS , ~~[and he or she wishes to disclose that fact voluntarily to the Commission,]~~ the taxpayer or the taxpayer's representative ~~[must]~~ **may** file with the Department an application for voluntary disclosure ~~[on]~~ **in** a form prescribed by the ~~[Commission]~~ **Department** before the Department has initiated an audit or investigation of the taxpayer. ***An application is deemed to be filed with the Department on the date the application is received by the Department.***

2. ~~[The Commission will not accept an application filed pursuant to subsection 1 until the application has been approved and signed by the Director. The Director shall not approve and~~

~~sign the application until he or she has verified that the Department did not initiate an audit or investigation of the taxpayer before the date that the taxpayer filed an application with the Department pursuant to subsection 1. An application is deemed to be filed with the Department on the date the application is received by the Department.]~~ *If the Department verifies that it did not initiate an audit or investigation of the taxpayer before the date on which the application was filed, the Department shall accept the application and notify the taxpayer or the taxpayer's representative, as applicable, of the acceptance of the application within 30 days after the date on which the application was filed.*

3. ~~[After the Director has signed and approved the application, the Commission will provide the taxpayer with a copy of the approved application.~~

~~—4.]~~ For the purposes of ~~[subsection]~~ *subsections 1 and 2*, the Department has initiated an audit or investigation of a taxpayer if the Department has:

(a) Contacted the taxpayer by telephone, in person or in writing regarding a possible tax liability ~~;~~ *or registration requirement; or*

(b) Given the taxpayer written notice that an audit will be conducted by the Department concerning liability for the type of tax that the taxpayer wishes to disclose voluntarily pursuant to this section.

4. Except as otherwise provided in subsection 5, the Department shall not consider the tax liability of a taxpayer as being voluntarily disclosed unless, within 90 days after the date on which notice of acceptance of the taxpayer's application is given pursuant to subsection 2, the taxpayer or the taxpayer's representative complies with the requirements of this subsection.

The taxpayer or the taxpayer's representative must:

(a) File with the Department any required registration and the delinquent tax returns for the tax estimated to be owed for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date on which the application was filed;

(b) Pay the tax estimated to be owed for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date on which the application was filed; and

(c) Submit any additional information or material required by the Department.

5. If a request for an extension of time to satisfy the requirements of subsection 4 is made in writing to the Department after the filing of an application and within 90 days after the date on which notice of acceptance of the application is given pursuant to subsection 2, the Director or a person designated by the Director may grant a taxpayer or the taxpayer's representative one extension of time, not to exceed 90 days, to satisfy those requirements. The request must be accompanied by proof satisfactory to the Director or his or her designee that the requirements cannot be satisfied within the time otherwise required by subsection 4 despite the exercise of ordinary care by the taxpayer or the taxpayer's representative and because of circumstances beyond the control of the taxpayer or the taxpayer's representative.

6. The circumstances described in subsection 5 include, without limitation:

(a) A natural disaster or other disaster;

(b) The death or hospitalization of the taxpayer or the taxpayer's representative; or

(c) Any other circumstance that could not reasonably have been anticipated at the time the application was filed.

Sec. 2. NAC 360.444 is hereby amended to read as follows:

360.444 The ~~[Commission will]~~ *Department shall* not consider the tax liability of a taxpayer as being voluntarily disclosed if, after filing an application for voluntary disclosure pursuant to NAC 360.440, the taxpayer ~~[]~~ *or the taxpayer's representative:*

1. ~~[Within 90 days after the taxpayer has received a copy of the approved application, fails to file with the Department the delinquent tax returns for the tax owed for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date the application was filed pursuant to NAC 360.440;~~

~~—2.— Within 90 days after the taxpayer has received a copy of the approved application, fails to pay any tax owed for the period described in subsection 1;~~

~~—3.]~~ *Fails to satisfy the requirements of subsection 4 of NAC 360.440 within the time provided by that subsection or extended pursuant to subsection 5 of NAC 360.440;*

2. Fails to ~~[make a good faith effort to]~~ comply with the applicable provisions of chapter 360, *360B*, 362, *363A, 363B*, 363C, *363D*, 369, 370, 372, 372A, *372B*, 374, 377, 377A, *377C* or 444A of NRS, NRS 482.313, *482C.230, 482C.240*, or chapter 585 or 680B of NRS, including, without limitation, registering with the Department, filing tax returns, paying any tax liability and remitting any taxes collected; or

~~[4.]~~ 3. Fails to provide an accurate estimate of his or her tax liability in the application for voluntary disclosure filed pursuant to NAC 360.440. The taxpayer shall be deemed to have provided an inaccurate estimate of his or her tax liability if:

(a) The tax liability provided in the application for voluntary disclosure is less than the taxpayer's actual tax liability by 10 percent or more; and

(b) The taxpayer is unable to demonstrate to the Department that he or she made a good faith effort to report accurately his or her tax liability in the application for voluntary disclosure.

Sec. 3. NAC 360.446 is hereby amended to read as follows:

360.446 1. If the ~~[Commission]~~ *Department* determines that the taxpayer has ~~[made a good faith effort in complying]~~ *complied* with the requirements set forth in NAC *360.440 and 360.444*, the Department shall not assess the penalty and interest set forth in NRS 360.300 on the entire amount of the tax liability.

2. If the ~~[Commission does not consider]~~ *Department determines that* the tax liability of a taxpayer ~~[to be]~~ *has not been* voluntarily disclosed pursuant to NAC *360.440 and 360.444*, the Department shall ~~[assess]~~ :

(a) *Assess* the penalty and interest set forth in NRS 360.300 on the entire amount of the tax liability ~~[.]~~ ; *and*

(b) *Notify the taxpayer of its determination and issue a bill for the amount of any tax, penalty or interest owed by the taxpayer. The notice and bill must be sent to the taxpayer by registered or certified mail, return receipt requested.*

3. ~~[A taxpayer who wishes to dispute the amount of any penalty or interest assessed by the Department pursuant to subsection 1 or 2 must]~~ *If the Department determines that the tax liability of a taxpayer has not been voluntarily disclosed and assesses a penalty or interest pursuant to NRS 360.300 and subsection 2, the taxpayer:*

(a) *Shall, within 60 days after receiving the notice and bill described in subsection 2, file any additional returns and pay the amount of any tax, penalty or interest that the Department has determined is owed by the taxpayer; and*

(b) *May, within 45 days after receiving the notice and bill described in subsection 2, file a written petition with the* ~~[Director within 45 days after the taxpayer receives a bill from the Department for that amount.]~~ *Department disputing its determination or the amount of any tax,*

penalty or interest assessed by the Department. The petition must set forth any information that supports the dispute.

4. The Commission will review any petition filed ~~[with the Director]~~ pursuant to subsection 3 and determine the amount of any tax, penalty or interest owed by the taxpayer. The Commission will notify the taxpayer of its decision by registered or certified mail, return receipt requested.

5. The taxpayer ~~[must]~~ *shall* file any additional returns and pay the amount of any tax, penalty or interest that the Commission determines is owed by the taxpayer pursuant to subsection 4 within 60 days after he or she receives the notification from the Commission pursuant to subsection 4.

6. Any action taken with respect to a taxpayer by the Department or Commission pursuant to this section does not affect the right of the taxpayer to request a waiver or reduction of a penalty or interest, or both, pursuant to NAC 360.396.