

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R130-21

December 23, 2021

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

AUTHORITY: §§ 1, 3-10, 16, 19 and 22, NRS 360.090; §§ 2 and 21, NRS 360.090, NRS 360.417, as amended by section 43 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1280, and section 30 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1277 (NRS 363D.210); § 11, NRS 360.090 and sections 17 and 62 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1272 and 1297 (NRS 363D.085); § 12, NRS 360.090 and sections 14 and 26 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1271 and 1275 (NRS 363D.070 and 363D.170); § 13, 17 and 18, NRS 360.090 and section 4 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1269 (NRS 363D.020); § 14, NRS 360.090 and section 10 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1271 (NRS 363D.050); § 15, NRS 360.090 and section 23 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1274 (NRS 363D.140); § 20, NRS 360.090 and section 25 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1274 (NRS 363D.160); § 23, NRS 360.090 and section 27 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1276 (NRS 363D.180).

A REGULATION relating to taxation; establishing provisions for the administration, calculation and payment of the tax imposed on the Nevada gross revenue of certain entities engaged in the business of extracting gold or silver, or both, in this State; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes an annual tax on each business entity engaged in the business of extracting gold or silver, or both, in this State whose Nevada gross revenue in a taxable year exceeds \$20,000,000. (Section 25 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1274 (NRS 363D.160)) **Section 9** of this regulation defines this tax for the purposes of this regulation as the “gold and silver excise tax.” **Sections 1-6** of this regulation provide for the administration of the gold and silver excise tax by the Department of Taxation in the same manner as other taxes are administered by the Department.

Existing law: (1) establishes the 12-month period beginning on January 1 and ending on December 31 of each calendar year as the taxable year for the purposes of the gold and silver

excise tax; and (2) provides that the gold and silver excise tax applies to the taxable year beginning on January 1, 2021, and ending on December 31, 2021, and each subsequent calendar year. (Sections 17 and 62 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1272 and 1297 (NRS 363D.085) **Section 11** of this regulation specifies that the first taxable year for the gold and silver excise tax is the calendar year beginning on January 1, 2021, and ending on December 31, 2021, and that each subsequent taxable year begins on January 1 and ends on December 31 of each subsequent calendar year.

Under existing law, the amount of Nevada gross revenue of a business entity on which the gold and silver excise tax is imposed is calculated by taking the amount of the gross revenue of the business entity, subtracting various deductions from that amount, then situsing the adjusted amount to this State. (Section 12 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1271 (NRS 363D.060)) **Section 12** of this regulation interprets the term “fiduciary duty” for the purposes of a deduction from the gross revenue of a business for the revenue of a business entity that is required by fiduciary duty to be distributed to another person or entity. (Sections 14 and 26 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1271 and 1275 (NRS 363D.070, 363D.170)) **Section 13** of this regulation interprets the term “intangible investments” for the purposes of the exemption from the gold and silver excise tax for a person whose activities within this State are confined to the owning, maintenance and management of the person’s intangible investments or of the intangible investments of certain persons or statutory trusts or business trusts. (Section 4 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1269 (NRS 363D.020)) **Section 14** of this regulation establishes the circumstances under which a good or service is provided on a complimentary basis for the purposes of the exclusion of the value of such goods or services from the gross revenue of a business entity. (Section 10 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1271 (NRS 363D.050))

Existing law requires each person responsible for maintaining the records of a taxpayer who is subject to the gold and silver excise tax to: (1) keep such records as may be necessary to determine the amount of tax owed by the taxpayer; (2) preserve those records for 4 years or until any litigation or prosecution regarding the tax is finally determined, whichever is later; and (3) make the records available for inspection by the Department upon demand at reasonable times during regular business hours. Existing law further authorizes the Department to adopt regulations specifying the types of records which must be kept to determine the amount of tax owed by the taxpayer. (Section 23 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1274 (NRS 363D.140)) **Section 15** of this regulation specifies the records that a person responsible for maintaining the records of a taxpayer is required to keep for the purpose of determining the amount of tax owed by the taxpayer.

Section 16 of this regulation requires a business entity subject to the gold and silver excise tax to use the same method of accounting for the purposes of the tax as the business entity uses for the purposes of its federal income taxes.

Section 17 of this regulation provides that the gold and silver excise tax is a tax imposed on the Nevada gross revenue of a business entity engaged in the business of extracting gold or silver, or both, in this State. **Section 17** also: (1) defines gold and silver for the purposes of determining whether a business entity is engaged in the business of extracting gold or silver, or both, in this State; (2) establishes that a business entity is engaged in the business of extracting gold or silver, or both, if the business entity realizes gross revenue from the sale of gold or silver, or both, extracted by the business entity in this State; and (3) provides that in determining

whether a business entity is engaged in the business of extracting gold or silver, or both, in this State, the Department is required to consider the activities of the business entity and not activities of other entities in which the business entity owns an interest. Finally, **section 17** provides that a business entity whose primary source of gross revenue is realized from the sale of gold or silver, or both, extracted in this State is not subject to the tax if the gross revenue realized from the gold or silver, or both, extracted in this State is sourced to one or more subsidiaries of the business entity in which the business entity has an ownership or controlling interest and such subsidiaries are subject to and pay the gold and silver excise tax.

Section 18 of this regulation establishes the types of business entities that constitute a business entity for the purposes of the gold and silver excise tax.

Section 19 of this regulation establishes the manner in which a business entity is required to convert a foreign currency into United States dollars when a contract for the sale of gold or silver, or both, establishes the sales price for gold or silver in a currency other than the United States dollar.

Existing law requires a business entity that is engaged in the business of extracting gold or silver, or both, in this State whose Nevada gross revenue in a taxable year exceeds \$20,000,000 to: (1) file with the Department, on or before April 1 immediately following the end of the taxable year, a return in a form prescribed by the Department; and (2) remit the amount of gold and silver excise due. (Section 25 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1274 (NRS 363D.160)) **Section 20** of this regulation requires such a business entity to file with the Department a Nevada Gold and Silver Excise Tax Return on or before the due date established by existing law and requires the first such return filed by a business entity to identify each: (1) location for which the Division of Environmental Protection of the State Department of Conservation and Natural Resources has issued the permit required by existing law to authorize the business entity to engage in a mining operation to extract gold or silver, or both, at the location; and (2) geographically separate operation where gold or silver, or both, is extracted by the business entity for which a separate statement of gross yield and claimed net proceeds from such extraction is filed for the purposes of the tax on the net proceeds of minerals.

Under existing law, the Department is authorized to waive all or part of any interest or penalty, or both, imposed on a taxpayer who fails to make a timely payment of a tax if the Executive Director of the Department or a hearing officer finds that the failure to make a timely payment was the result of circumstances beyond the taxpayer's control and occurred despite the exercise of ordinary care and without intent. (NRS 360.419) Existing law further provides that if the Department determines that an overpayment of the gold and silver excise tax was made intentionally or by reason of carelessness, the Department must not allow the taxpayer to receive interest on the overpayment. (Section 30 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1277 (NRS 363D.210)) **Sections 2 and 21** of this regulation provide that: (1) if the failure to pay the gold and silver excise tax in a timely manner was caused by reliance on the taxpayer's calculations for its most recent federal income tax return, Nevada Gold and Silver Excise Tax Return or statements regarding gross yield and net proceeds for the purposes of the tax on the net proceeds of minerals, the Department may waive all or part of the penalty or interest, or both, imposed on the taxpayer; and (2) if an overpayment of the commerce tax was caused by such reliance, the overpayment is deemed to be made intentionally or by reason of carelessness, the Department must not allow the taxpayer to receive interest on the overpayment.

Section 22 of this regulation provides for the payment under protest of the gold and silver excise tax, without the waiver of any claim relating to the amount of tax due.

Existing law imposes an annual commerce tax on the Nevada gross revenue of certain business entities engaged in a business in this State, at a rate that is based on the industry in which a business entity is primarily engaged. (Chapter 363C of NRS) **Section 23** of this regulation provides that the rules for situsing the gross revenue of a business entity to Nevada for the purposes of the commerce tax apply to the situsing of the gross revenue of a business entity to Nevada for the purposes of the gold and silver excise tax.

Section 1. NAC 360.395 is hereby amended to read as follows:

360.395 The penalty imposed pursuant to NRS 360.417 for the late payment of tax provided for in chapter 362, 363A, 363B, 363C, 369, 370, 372, 372A, 377, 377A, 444A or 585 of NRS *or sections 2 to 40, inclusive, of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1269-79 (NRS 363D.010-363D.310, inclusive)* or any fee provided for in NRS 482.313 must be in the amount of:

1. If the payment is not more than 10 days late, 2 percent of the amount of the tax or fee due.
2. If the payment is more than 10 days late but not more than 15 days late, 4 percent of the amount of the tax or fee due.
3. If the payment is more than 15 days late but not more than 20 days late, 6 percent of the amount of the tax or fee due.
4. If the payment is more than 20 days late but not more than 30 days late, 8 percent of the amount of the tax or fee due.
5. If the payment is more than 30 days late, 10 percent of the amount of the tax or fee due.

Sec. 2. NAC 360.397 is hereby amended to read as follows:

360.397 1. Except as otherwise provided in NAC 360.398 and 363C.250 *† and section 21 of this regulation*, a taxpayer or the taxpayer's agent may request the waiver or reduction of

the penalty or interest, or both, by submitting to the Department a written statement signed under oath by the taxpayer or the taxpayer's agent which sets forth the facts and circumstances surrounding the failure of the taxpayer to make the payment in a timely manner.

2. The Department shall not consider a request made pursuant to subsection 1 until the taxpayer has paid in full the tax or fee upon which the interest or penalty is assessed.

Sec. 3. NAC 360.438 is hereby amended to read as follows:

360.438 1. A person may request that the Commission compromise the liability of the person for a tax, contribution, premium, fee, interest or penalty assessed pursuant to the provisions of chapter 360, 360B, 362, 363A, 363B, 363C, 368A, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS *or sections 2 to 40, inclusive, of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1269-79 (NRS 363D.010-363D.310, inclusive)* as administered or audited by the Department by submitting to the Department, on a form prescribed by the Department, an offer to compromise the liability of the person.

2. An offer to compromise the liability of a person submitted pursuant to subsection 1 must include:

(a) A statement of the grounds upon which the compromise is sought and any other information to support the offer;

(b) Copies of such financial information and documentation as may be required by the Department, including, without limitation, financial statements, bank records, accounting ledgers and a statement or explanation of any assets that may be acquired by the person pursuant to the resolution of a pending claim, cause of action, settlement or insurance disbursement, inheritance or an unsatisfied judgment or court order;

(c) An affirmation, signed under penalty of perjury, attesting to the truthfulness and accuracy of all information and documentation submitted with the offer to compromise; and

(d) A written statement signed by the person consenting to suspend any and all statutory periods of limitation relevant to the collection of the liability of the taxpayer or the seizure, attachment, garnishment or execution upon property or assets of the taxpayer to satisfy the liability of the taxpayer during the period in which the Commission considers whether to accept or reject the offer of compromise.

3. The Department shall review, analyze and verify an offer of compromise and any accompanying information and documentation submitted pursuant to subsection 1.

4. If, after reviewing, analyzing and verifying the offer pursuant to subsection 3, the Department determines that:

(a) The offer does not comply with subsection 1 or does not include adequate supporting information and documentation, the Department shall return the offer to the person who submitted the offer with a written explanation of the deficiencies.

(b) Except as otherwise provided in paragraph (c), the offer complies with subsection 1, the Department shall forward to the Commission the offer and the recommendation of the Department as to whether the Commission should accept or reject the offer.

(c) The offer complies with subsection 1 and the Department will recommend that the Commission reject the offer, the Department shall advise the person submitting the offer in writing that the Department will recommend that the Commission reject the offer before forwarding the offer and the recommendation of the Department to the Commission pursuant to paragraph (b). A person so advised may withdraw the offer.

5. Except as otherwise provided in this subsection, if a person submits an offer pursuant to subsection 1, the Department shall cease, and shall not commence, any action related to the collection of the liability of the taxpayer or the seizure, attachment, garnishment or execution upon property or assets in satisfaction of the liability until the Commission accepts or rejects the offer. If the Department determines that the offer submitted pursuant to subsection 1 was offered for the purpose of delaying or avoiding the collection of the liability of the person, the Department may continue or commence any action related to the collection of the liability of the taxpayer or the seizure, attachment, garnishment or execution upon property or assets in satisfaction of the liability.

6. The Commission will review an offer received from the Department pursuant to subsection 4 and issue a written decision as to whether the Commission accepts or rejects the offer of compromise.

7. If the written decision of the Commission issued pursuant to subsection 6 is the acceptance of the offer of compromise, the Commission may:

(a) Make the acceptance of the offer contingent upon the satisfaction of conditions as the Commission deems appropriate, including, without limitation, that all or part of the amount of the compromise be paid within a specific time frame.

(b) Allow the person submitting the offer to pay the amount of the compromise in reasonable installments. If the Commission allows the person submitting the offer to pay the amount of the compromise in reasonable installments, the Commission may make the acceptance of the offer contingent upon the person complying with the schedule of installment payments.

8. If the Commission makes the acceptance of an offer of compromise contingent upon the satisfaction of a condition pursuant to subsection 7, the Commission will hold a hearing before

finally accepting or rejecting the offer to determine whether the conditions upon the acceptance of the offer were satisfied. If the Commission determines that the conditions upon the acceptance of the offer were satisfied, the Commission will issue a written decision to accept the offer of compromise. If the Commission determines that the conditions upon the acceptance of the offer were not satisfied, the Commission will issue a written decision specifying the manner in which such conditions failed to be satisfied.

9. Except as otherwise provided in subsection 10, after the Commission has accepted an offer of compromise and the person has tendered the full amount of money offered in the compromise, the compromise will be deemed to be an accord and satisfaction of the liability of the person for that liability which is the subject of the compromise.

10. If, after a hearing, the Commission determines that the acceptance by the Commission of an offer of compromise was procured through fraud, misrepresentation or concealment or resulted from a mutual mistake of fact, the Commission may issue a written decision to reinstate the liability of the taxpayer in the amount originally assessed by the Department. The written decision of the Commission is a final decision for the purposes of judicial review.

11. The acceptance of an offer of compromise by the Commission pursuant to this section shall not be deemed to be a limitation on the rights and remedies of the Department with respect to any person not named or identified in the offer of compromise.

Sec. 4. 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, 362, 363C, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS *or sections 2 to 40, inclusive, of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1269-79 (NRS 363D.010-363D.310, inclusive)* and he or

she wishes to disclose that fact voluntarily to the Commission, the taxpayer or the taxpayer's representative must file with the Department an application for voluntary disclosure on a form prescribed by the Commission before the Department has initiated an audit or investigation of the taxpayer.

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.

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 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

(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.

Sec. 5. NAC 360.444 is hereby amended to read as follows:

360.444 The Commission will 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:

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 make a good faith effort to comply with the applicable provisions of chapter 360, 362, 363C, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS, *sections 2 to 40, inclusive, of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1269-79 (NRS 363D.010-363D.310, inclusive)*, including, without limitation, registering with the Department, filing tax returns, paying any tax liability and remitting any taxes collected; or

4. 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. 6. NAC 360.584 is hereby amended to read as follows:

360.584 NAC 360.550 to 360.598, inclusive, apply to online registration, filing and payment by electronic transfer of money for taxes, fees, interest, penalties or other charges provided for in chapters 360, 361, 362, 363A, 363B, 363C, 368A, 369, 370, 372, 372A, 374,

377, 377A and 444A of NRS *and sections 2 to 40, inclusive, of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1269-79 (NRS 363D.010-363D.310, inclusive)* and to any fee provided for in NRS 482.313 or chapter 680B of NRS.

Sec. 7. Chapter 363D of NAC is hereby amended by adding thereto the provisions set forth as sections 8 to 23, inclusive, of this regulation.

Sec. 8. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 9 and 10 of this regulation have the meaning ascribed to them in those sections.*

Sec. 9. *“Gold and silver excise tax” means the tax imposed by sections 2 to 40, inclusive, of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1269-79 (NRS 363D.010-363D.310, inclusive).*

Sec. 10. *“Nevada Gold and Silver Excise Tax Return” means the return filed with the Department pursuant to section 25 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1274 (NRS 363D.160) and section 20 of this regulation.*

Sec. 11. *For the purposes of the gold and silver excise tax, the taxable year is the period beginning on January 1, 2021, and ending on December 31, 2021, and the 12-month period beginning on January 1 and ending on December 31 of each subsequent calendar year.*

Sec. 12. *For the purposes of determining whether revenue received by a business entity is pass-through revenue pursuant to paragraph (a) of subsection 1 of section 14 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1271 (NRS 363D.070) that may be deducted from the gross revenue of the business entity pursuant to subsection 4 of section 26 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1275 (NRS*

363D.170), “fiduciary duty” means a duty arising from a relationship governed by the provisions of NRS 162.010 to 162.140, inclusive.

Sec. 13. For the purposes of the exemption from the gold and silver excise tax set forth in paragraph (m) of subsection 2 of section 4 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1270 (NRS 363D.020), the term “intangible investments” includes, without limitation, the intangible investments described in that paragraph and an interest in any entity, including, without limitation, a trust, S corporation, partnership, limited-liability company or other entity in which a person owns an interest, regardless of whether that person controls or participates in the management of the entity in which the person owns an interest.

Sec. 14. For the purposes of the exclusion from the gross revenue of a business entity set forth in paragraph (c) of subsection 3 of section 10 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1271 (NRS 363D.050), goods or services are provided on a complimentary basis if the goods or services are provided at no charge, in exchange for points or credits earned pursuant to a program under which points or credits are earned or awarded to the customers of a business entity or in exchange for a coupon, voucher or certificate.

Sec. 15. 1. Pursuant to section 23 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1274 (NRS 363D.140), to determine the amount of the liability of a taxpayer for the gold and silver excise tax, the person responsible for maintaining the records of the taxpayer must maintain the following records of the taxpayer for the period specified in paragraph (b) of subsection 1 of section 23 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1274 (NRS 363D.140):

- (a) A general ledger with transaction detail in Microsoft Excel format.*
- (b) A trial balance.*

(c) A chart of accounts.

(d) Each federal and state tax return, including each original return and any amended return.

(e) The work papers relating to each federal and state tax return, including, without limitation, a reconciliation of the accounting records reflecting any adjustments in reported amounts.

(f) Bank statements.

(g) Invoices.

(h) Cash receipts.

(i) Contracts.

(j) Journal records.

(k) Inventory records that pertain to the extraction, processing and selling of gold or silver, or both.

(l) Proof of affiliation with other persons or entities, such as federal forms 851, K-1 and SEC 10-K schedule of affiliates.

(m) Any other documentation the Department may require to determine the amount of the liability of a taxpayer for the gold and silver excise tax.

Sec. 16. *A business entity's method of accounting for gross revenue for a taxable year for the purposes of determining the amount of the gold and silver excise tax owed by the business entity must be the same as the business's method of accounting for federal income tax purposes for the business's federal taxable year which includes that calendar quarter. If a business entity's method of accounting for federal income tax purposes changes, its method of accounting for gross revenue pursuant to sections 2 to 40, inclusive, of Assembly Bill No. 495,*

chapter 249, Statutes of Nevada 2021, at pages 1269-79 (NRS 363D.010-363D.310, inclusive), must be changed accordingly.

Sec. 17. 1. *The gold and silver excise tax is a tax imposed on a business entity engaged in the business of extracting gold or silver, or both, in this State. For the purposes of the gold and silver excise tax:*

(a) Gold or silver has the meaning ascribed to it in section 8 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1270 (NRS 363D.040) and includes, without limitation, dore bars, slurry and refined ore.

(b) A business entity is engaged in the business of extracting gold or silver, or both, in this State if the business entity realizes any gross revenue during a taxable year from the sale of gold or silver, or both, extracted by the business entity in this State.

2. To determine whether a business entity is engaged in the business of extracting gold or silver, or both, in this State, the Department must consider the activities of the business entity and not the activities of any other entity in which the business entity owns an interest.

3. A business entity, including, without limitation, a joint venture, whose primary source of gross revenue is realized from the sale of gold or silver, or both, extracted in this State is not subject to the gold and silver excise tax if the gross revenue of the business entity from the sale of gold or silver, or both, extracted in this State is sourced to one or more subsidiaries of the business entity that the business entity owns or controls and that are subject to and pay the gold and silver excise tax. Any gross revenue realized by a business entity described in this subsection from any of its subsidiaries is not subject to the gold and silver excise tax.

Sec. 18. 1. *Except as otherwise provided in subsection 3 and sections 2 to 40, inclusive, of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at pages 1269-79 (NRS*

363D.010-363D.310, inclusive), for the purposes of the gold and silver excise tax, a person or other entity is a business entity if the person is:

(a) An entity organized pursuant to title 7 of NRS or another equivalent statute of this State or another jurisdiction, other than an entity organized pursuant to chapter 82 or 84 of NRS.

(b) A state, national, domestic or foreign bank, whether organized under the laws of this State, another state or another country, or under federal law.

(c) A savings and loan association or savings bank, whether organized under the laws of this State, another state or another country, or under federal law.

(d) A partnership governed by chapter 87 of NRS or another equivalent statute of this State or another jurisdiction.

(e) A registered limited-liability partnership registered with the Secretary of State pursuant to NRS 87.440 to 87.500, inclusive.

(f) A business association.

(g) A joint venture, except a joint operating or co-ownership arrangement which meets the requirements of 26 C.F.R. § 1.761-2(a)(3), Treas. Reg. § 1.761-2(a)(3), that elects out of federal partnership treatment as provided by 26 U.S.C. § 761(a).

(h) A joint stock company.

(i) A holding company.

(j) A natural person who is required to file with the Internal Revenue Service a:

(1) Schedule C (Form 1040), Profit or Loss from Business, or its equivalent or successor form;

(2) Schedule E (Form 1040), Supplemental Income and Loss, or its equivalent or successor form, if an activity of the natural person is reported on Part I of that Schedule; or

(3) Schedule F (Form 1040), Profit or Loss from Farming, or its equivalent or successor form.

(k) Any other person engaging in a business in this State.

2. For the purpose of determining whether a person or other entity is a business entity, a person or other entity is not a business entity if the person or entity is listed in subsection 2 of section 4 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1269 (NRS 363D.020), regardless of whether the person or entity is engaging in a business in this State.

3. As used in this section:

(a) "Holding company" means an entity that confines its activities to owning stock in, and supervising management of, other companies.

(b) "Joint stock company" means a common-law unincorporated business enterprise of natural persons possessing common capital with ownership interests represented by shares of stock.

(c) "Joint venture" means a partnership engaged in the joint prosecution of a particular transaction for mutual profit.

Sec. 19. *If a contract for the sale of gold or silver extracted by a business entity in this State establishes the sales price of the gold or silver in a currency other than the United States dollar, in calculating the amount of the gross revenue realized from the sale of the gold or silver, the business entity must convert the sales price into United States dollars using the average exchange rate for the taxable year, as determined using Forex Exchange.*

Sec. 20. 1. Each business entity whose Nevada gross revenue in a taxable year exceeds \$20,000,000 must file with the Department a Nevada Gold and Silver Excise Tax Return for that taxable year pursuant to subsection 2 of section 25 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1274 (NRS 363D.160).

2. Each business entity shall submit with the first Nevada Gold and Silver Excise Tax Return filed with the Department a report that identifies each:

(a) Location for which the business entity has been issued a permit to engage in a mining operation pursuant to NRS 519A.210; and

(b) Geographically separate operation where gold or silver, or both, is extracted by the business entity for which a separate statement is filed pursuant to NRS 362.110.

Sec. 21. 1. In addition to the grounds set forth in NAC 360.396 for the waiver or reduction of any penalty or interest, or both, for a late payment of the gold and silver excise tax, the Department may waive or reduce the penalty or interest, or both, for a late payment of the gold and silver excise tax if:

(a) The Nevada Gold and Silver Excise Tax Return for which the late payment is being made was timely filed;

(b) The Department determines that the late payment was made because, in calculating the Nevada gross revenue of the taxpayer, the taxpayer or the taxpayer's agent relied on:

(1) The gold and silver excise tax calculations of the taxpayer for the immediately preceding taxable year and the taxpayer has paid an amount of gold and silver excise tax for the current taxable year that is at least equal to the gold and silver excise tax paid by the taxpayer for the immediately preceding taxable year; or

(2) The federal income tax calculations of the taxpayer for the most recent federal tax year of the taxpayer; and

(c) The taxpayer timely paid at least 90 percent of the amount of gold and silver excise tax owed by the taxpayer for the current taxable year.

2. In determining whether to waive or reduce the penalty or interest, or both, for a late payment pursuant to subsection 1, the Department may consider whether the amount of Nevada gross revenue reported on the Nevada Gold and Silver Excise Tax Return for which the late payment was made is:

(a) Greater than the gross yield during the immediately preceding calendar year from the operation for which the Nevada Gold and Silver Excise Tax Return was filed, as reported to the Department in the statement filed with the Department pursuant to NRS 362.110 for that operation for the immediately preceding calendar year; or

(b) The same as, or similar to, the revenue reported on the federal income tax return of the taxpayer for the most recent taxable year.

3. A taxpayer or the taxpayer's agent may request the waiver or reduction of the penalty or interest, or both, pursuant to subsection 1 by submitting to the Department any federal income tax return, Nevada Gold and Silver Excise Tax Return or statement filed pursuant to NRS 362.110 on which the taxpayer or taxpayer's agent relied and a written statement signed under oath by the taxpayer or the taxpayer's agent which establishes that the taxpayer qualifies for the relief requested.

4. The Department shall not consider a request made pursuant to subsection 3 until the taxpayer has paid in full the tax or fee upon which the interest or penalty is assessed.

5. If an overpayment of the gold and silver excise tax was made because, in calculating the Nevada gross revenue of the taxpayer, the taxpayer or the taxpayer's agent relied on the information described in paragraph (b) of subsection 1, the overpayment must be deemed to be made intentionally or by reason of carelessness for the purposes of section 30 of Assembly Bill No. 495, chapter 249, Statutes of Nevada 2021, at page 1277 (NRS 363D.210), and the Department must not allow any interest on the overpayment.

Sec. 22. A business entity may pay under protest the gold and silver excise tax, without waiving or otherwise affecting any right of the business entity to recover any amount determined, through appropriate legal action taken by the business entity against the Department, to have been in excess of the amount of tax lawfully payable.

Sec. 23. The provisions of NAC 363C.310 to 363C.590, inclusive, set forth the method for situsing to this State the gross revenue from the provision of certain services for the purposes of the gold and silver excise tax. NAC 363C.310 to 363C.590, inclusive, are not intended to set forth a comprehensive list of services but provides the method for situsing to this State the gross revenue from each service listed. If a service is not specifically listed in NAC 363C.310 to 363C.590, inclusive, the provisions of those sections providing the method for situsing a similar service may provide guidance. The provision of a service that is not listed in NAC 363C.310 to 363C.590, inclusive, or similar to a service listed in those sections may be handled on a case-by-case basis, the revenue from such a service must be sitused to this State in accordance with NRS 363C.220. The Department reserves the right to review and adjust any situsing of gross revenue made by a business entity.