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Posted: 03-06-15

NOTICE OF WORKSHOP

To Solicit Comments on Proposed Regulation
and
Statement Regarding Small Business Impact Determination
LCB File No. R095-14

TO: To All Interested Parties
FROM: Blake Doerr, Chief Deputy Executive Director
DATE: March 6, 2015
RE: Workshop on Proposed Regulation Relating and Statement Regarding Small Business Impact

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The Department will hold a workshop to receive input on proposed changes to Chapter 360 of the Nevada Administrative Code revising provisions governing the partial abatement from certain taxes for new and expanding businesses, and providing other matters properly relating thereto. The workshop will be held at the following locations and date and time:

Carson City – **Tuesday, March 31, 2015**
Contractors Board
9670 Gateway Drive, STE 100
Reno, Nevada 89521

Henderson – Via Video Conference
Contractors Board
2310 Corporate Circle STE 200
Henderson, Nevada 89074

The meeting will start at 2:00 p.m. All interested parties will have the opportunity to present their ideas. Drafts will be circulated to all parties, prior to submission to the Legislative Counsel Bureau, and prior to the public hearing(s) before the Nevada Tax Commission. All public input will be considered in preparing a proposed regulation to be presented to the Nevada Tax Commission for adoption.

A draft of the proposed regulation will be made available on the Department's web-site for your informational review. Proposed amendments to the administrative code will be discussed at the above scheduled meeting. We encourage you to provide us with your suggestions in writing.

If you require any additional information concerning this matter, please don't hesitate to contact the Department of Taxation. Thank you.

NOTE: We are pleased to make accommodations for members of the public who are disabled. Please notify the Department of Taxation in writing, at 1550 College Parkway, Carson City, Nevada, 89706 or call (775) 684-2100 prior to the meeting.

Statement Regarding Small Business Impact Determination

LCB File No. R095-14 contains revised provisions governing the partial abatement from certain taxes for new and expanding businesses, and providing other matters properly relating thereto. The revised provisions of LCB File No. R095-14 provide that a Nevada Business must reach an agreement with the Office of Economic Development, rather that the Commission on Economic Development. The application must be submitted to the Office at least 45 days before a regularly scheduled meeting of less than 45 days before a regularly scheduled meeting of the Office, at the next regularly scheduled meeting immediately following that meeting. The effective date of the partial abatement is identified in the Tax Abatement and Incentive Agreement. The Regulation defines what eligible machinery or equipment is and the amount of the capital investment. If a business does not meet the terms as indicated in the Tax Abatement and Incentive Agreement, the business can file a petition for redetermination with the Department of Taxation. A decision of the Department of Taxation may be appealed to the Tax Commission pursuant to NRS 360.390.

The Department does not believe that the proposed regulation, LCB File No. R095-14 imposes a direct and significant economic burden upon a small business (fewer than 150 full-time or part-time employees) or directly restrict the formation, operation, or expansion of a small business.

What methods were used to determine the impact on small businesses? Initially, the Department did its own analysis by considering the extent of the regulatory provisions contained in LCB File No. R095-14. The LCB File No. R095-14 regulations are simple changes in how and with which department a taxpayer deals with to get a partial abatement. Nonetheless the Department prepared a questionnaire that asked for input regarding the potential impact that was sent to the Department's contact list of 322.

One person returned the questionnaire and no one indicated that this regulation would have a direct and significant economic burden upon a small business.

Based on the foregoing, I hereby certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in this statement is accurate.

Blake Doerr, Chief Deputy Executive Director
March 6, 2015

Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the Department of Taxation in writing or by calling 775-684-2096 no later than five working days prior to the meeting.

Notice has been posted at the following locations: The Department of Taxation - 1550 College Parkway, Carson City, Nevada. Notice was mailed to each County Public Library for posting.

Notice has been EMAILED/FAXED for posting at the following locations: Department of Taxation - 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation - 555 E. Washington Avenue, Grant Sawyer Office Building, Suite 1300, Las Vegas, Nevada; Department of Taxation – 2550 Paseo Verde Parkway, Suite 180, Henderson; The Legislative Building, Capitol Complex, Carson City, Nevada; and the Nevada State Library, 100 Stewart Street, Carson City, Nevada. Notice of this meeting was posted on the Internet through the Department of Taxation website at www.tax.state.nv.us and on the Legislative website at www.leg.state.nv.us.

Posted: 03-04-15

Nevada Department of Taxation Regulatory Workshop

NEVADA STATE CONTRACTORS BOARD
9670 Gateway Drive, STE 100
Reno, Nevada 89521

VIDEO CONFERENCE

NEVADA STATE CONTRACTORS BOARD
2310 Corporate Circle, STE 200
Henderson, Nevada 89074

March 31, 2015
2:00 P.M.

Note: Items on this agenda may be taken in a different order than listed.
Items may be combined for consideration by the Department of Taxation.
Items may be pulled or removed from the agenda at any time.

I. Public Comment – In consideration of others, who may also wish to provide public comment, please avoid repetition and limit your comments to no more than five (5) minutes.

II. We will hold a workshop to receive input on proposed changes to Chapter 360 of the Nevada Administrative Code regarding provisions governing the partial abatement from certain taxes for new and expanding businesses and matters related thereto (for possible action).

III. **Public Comment – In consideration of others, who may also wish to provide public comment, please avoid repetition and limit your comments to no more than five (5) minutes.

IV. Adjourn

**This item is to receive public comment on any issue and any discussion of those items; provided that comment will be limited to areas relevant to and within the authority of the Nevada Department of Taxation. No action will be taken on any items raised in the public comment period. At the discretion of the Department, public comment may be received prior to action on individual agenda items. Public Comment may not be limited based on viewpoint. Prior to the commencement and conclusion of a contested case or a quasi judicial proceeding that may affect the due process rights of an individual the board may refuse to consider public comment. See NRS 233B.126.

Please contact Cory Roberts 775-684-2030 for any support materials. The support materials are made available at the Department of Taxation, 1550 College Pkwy, Carson City, NV and made available during the meeting located at the Nevada Legislative Building, 401 S. Carson Street, Room 2134 Carson City, NV.

Members of the public who are disabled and require accommodations or assistance at this meeting are requested to notify the Department of Taxation in writing or call 684-2030 prior to the meeting.

Notice of this meeting has been posted at the Department of Taxation 1550 College Parkway, Carson City, NV; and mailed to each County Public Library for posting.

Notice of this meeting was EMAILED for posting to the following locations: Department of Taxation, 555 E. Washington Street; Las Vegas, Department of Taxation, 2550 Paseo Verde, Suite 180, Henderson, Department of Taxation, 4600 Kietzke Lane, Building L, Suite 235, Reno, Department of Health and Human Services, 4150 Technology Way, Carson City, and FAXED to the State Library, Carson City, Nevada. Notice of this meeting was posted on the Internet through the Department of Taxation website at www.tax.nv.gov and on the Legislative website at www.leg.state.nv.us.

PROPOSED REGULATION OF THE

NEVADA TAX COMMISSION

LCB File No. R095-14

July 28, 2014

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

AUTHORITY: §§1-7, 9 and 14, NRS 360.750; §8, NRS 360.750, 361.0687 and 701A.210; §10, NRS 360.750 and 363B.120; §11, NRS 360.750 and 374.357; §§12 and 13, NRS 360.750, 363B.120 and 374.357.

A REGULATION relating to taxation; revising provisions governing the partial abatement from certain taxes for new and expanding businesses; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a business which intends to locate or expand in this State to apply to the Office of Economic Development for a partial abatement of the property taxes, modified business taxes or local school support taxes imposed on the new or expanding business. Under existing law, to be eligible for the partial abatement, the business must continue in operation at a specified location for a period of at least 5 years after the effective date of the partial abatement and satisfy certain requirements for the partial abatement within a specified period after the effective date of the partial abatement. Existing law further provides that the Nevada Tax Commission may adopt regulations as it deems necessary to carry out existing law governing partial abatement for new and expanding businesses. (NRS 360.750) **Sections 3, 7 and 10-12** of this regulation specify that the effective date of the partial abatement is the effective date stated in the agreement executed by the business with the Office of Economic Development.

Under existing law, the criteria that a new or expanding business must satisfy to be eligible for a partial abatement of modified business taxes may include making a capital investment in capital assets that will be retained at the location of the business for a certain period. (NRS 360.750, 363B.120) **Section 10** amends existing regulations to provide that for the purpose of determining the eligibility of a new or expanding business for a partial abatement of the modified business taxes imposed on the business, expenditures for "eligible machinery and equipment" are deemed to be a capital investment by the new or expanding business. Under existing law and regulations, the term "eligible machinery and equipment" is defined as machinery or equipment deductible as a business asset under section 179 of the federal Internal Revenue Code, except for buildings or the structural components of buildings, equipment used by a public utility, equipment used for medical treatment, machinery or equipment used in mining, or machinery or equipment used in gaming. (NRS 374.357, NAC 360.469)

Under existing regulations, if the Department of Taxation determines that a business for which the Office has approved an application for a partial abatement has failed to continue to meet the requirements for the partial abatement, the Department must determine the amount of tax owed to the Department. A business against whom such a determination is made may appeal to the Nevada Tax Commission for a determination of whether the business has substantially complied with the requirements for the partial abatement. (NAC 360.4775) **Section 13** of this regulation amends this procedure by requiring the business to file a petition for redetermination with the Department for such a determination, in the same manner as required for taxpayers contesting a determination that taxes are owed to the Department. Under **section 13**, the business may appeal to the Tax Commission from the order of the Department's hearing officer.

The remaining provisions of this regulation: (1) update existing regulations to include references to the Office of Economic Development rather than the Commission on Economic Development and to the current statutory provisions; and (2) repeal a regulation relating to refunds of taxes paid by an applicant for a partial abatement before those taxes were abated.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. ***"Office" means the Office of Economic Development.***

Sec. 3. ***"Tax Abatement and Incentive Agreement" means the agreement executed by the applicant and the Office for a partial abatement pursuant to paragraph (b) of subsection 2 of NRS 360.750.***

Sec. 4. NAC 360.466 is hereby amended to read as follows:

360.466 As used in NAC 360.466 to 360.4775, inclusive, ***and sections 2 and 3 of this regulation,*** unless the context otherwise requires, the words and terms defined in NAC ~~[360.468,]~~ 360.469 and 360.470 ***and sections 2 and 3 of this regulation*** have the meanings ascribed to them in those sections.

Sec. 5. NAC 360.470 is hereby amended to read as follows:

360.470 "Partial abatement" means the reduction of a portion of the taxes imposed pursuant to chapter 361, ~~[364A]~~ ***363B*** or 374 of NRS, or any combination thereof, which is authorized by NRS 360.750.

Sec. 6. NAC 360.472 is hereby amended to read as follows:

360.472 1. To apply for a partial abatement, a person must submit an application to the ~~[Commission]~~ ***Office*** on a form prescribed by the ~~[Commission within the period prescribed in subsection 2.]~~ ***Office.***

2. ~~[If the application is for a partial abatement of the taxes imposed pursuant to chapter 361 or 364A of NRS, the application must be submitted not earlier than 18 months before the business is located or expanded in this State. If the application is for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the application must be submitted not later than 60 days after the date of acquisition of the eligible machinery or equipment.~~

~~3.]~~ Except as otherwise provided in subsection ~~[4,]~~ ***3,*** the ~~[Commission]~~ ***Office*** will consider an application submitted pursuant to subsection 1 if the application is received:

(a) At least ~~[15 working]~~ ***45*** days before a regularly scheduled meeting of the ~~[Commission,]~~ ***Office,*** at that meeting; or

(b) Less than ~~[15 working]~~ ***45*** days before a regularly scheduled meeting of the ~~[Commission,]~~ ***Office,*** at the next regularly scheduled meeting immediately following that meeting.

~~[4.]~~ ***3.*** If the ~~[Commission]~~ ***Office*** determines that an application submitted pursuant to subsection 1 requires special or additional review and consideration by the ~~[Commission,]~~ ***Office,*** the ~~[Commission]~~ ***Office*** may postpone consideration of the application until the next regularly scheduled meeting of the ~~[Commission.~~

~~5.]~~ ***Office.***

4. If the ~~[Commission]~~ ***Office*** approves an application for a partial abatement, the ~~[Commission]~~ ***Office*** will forward to the Department, with the certificate of eligibility required

pursuant to subsection 4 of NRS 360.750, any materials submitted to the ~~[Commission]~~ ***Office*** in support of the application submitted pursuant to subsection 1.

Sec. 7. NAC 360.474 is hereby amended to read as follows:

360.474 1. The ~~[Commission]~~ ***Office*** will consider an application for a partial abatement if the goals of the applicant are consistent with the goals of the ~~[Commission]~~ ***Office*** concerning industrial development and diversification. The goals of the ~~[Commission]~~ ***Office*** include, without limitation:

(a) Diversification from the industries of gaming and hospitality;

(b) The attraction of basic industries to this State, including, without limitation, manufacturing, warehousing and distribution;

(c) The attraction to this State of business facilities and services, including, without limitation, corporate headquarters, facilities for research and development, and facilities for services such as technical assistance with products of the business or credit services; and

(d) The expansion of existing businesses and industries that are consistent with the goals described in paragraphs (a), (b) and (c).

2. Before the ~~[Commission]~~ ***Office*** approves an application for a partial abatement, the ~~[Commission]~~ ***Office*** will consider whether the applicant:

(a) Complies with the requirements set forth in NRS 360.750;

(b) Commits to continue in operation in this State for:

(1) At least 5 years ~~[;]~~ ***after the effective date of the partial abatement as indicated in the Tax Abatement and Incentive Agreement;*** or

(2) The period specified in the ~~[agreement executed by the applicant with the Commission pursuant to paragraph (b) of subsection 2 of NRS 360.750,]~~ ***Tax Abatement and Incentive Agreement,***

➥ whichever is later ***;*** ~~[, after the date on which the applicant initially pays taxes to the Department or the county treasurer, as applicable, after the partial abatement has been approved by the Commission;]~~

(c) Offers primary jobs; and

(d) If the application concerns a partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~ ***363B*** or 374 of NRS, registers with the Department on a form provided by the Department.

3. As used in this section, "primary job" means a position of employment offered by an applicant for a partial abatement, the compensation for which is obtained from revenue that is generated outside the economic region in which the business is located.

Sec. 8. NAC 360.4743 is hereby amended to read as follows:

360.4743 1. Except as otherwise provided in NRS ~~[361.0685 or]~~ 361.0687 ~~[,]~~ ***or 701A.210,*** the ~~[Commission]~~ ***Office*** may not approve a partial abatement pursuant to NRS ~~[361.0685 or]~~ 361.0687 ~~[:]~~ ***or 701A.210:***

(a) Of greater percentage of the taxes on real and personal property payable by the business each year pursuant to chapter 361 of NRS than the lesser of:

(1) Fifty percent; or

(2) A percentage agreed upon in writing by the business receiving the partial abatement and the governing body of the local government whose tax revenue will be affected by the partial abatement; or

(b) Of longer duration than the shorter of:

(1) Ten years; or

(2) A duration agreed upon in writing by the business receiving the partial abatement and the governing body of the local government whose tax revenue will be affected by the partial abatement.

2. If the ~~[Commission]~~ ***Office*** grants a partial abatement pursuant to NRS ~~[361.0685 or]~~ 361.0687 ***or 701A.210*** during the period beginning on:

(a) January 1 and ending on June 30 of the same year, the partial abatement begins to apply on the later of:

(1) July 1 of the same year; or

(2) A date agreed upon in writing by the business receiving the partial abatement and the governing body of the local government whose tax revenue will be affected by the partial abatement; or

(b) July 1 and ending on December 31 of the same year, the partial abatement begins to apply on the later of:

(1) The date on which the ~~[Commission]~~ ***Office*** grants the partial abatement; or

(2) A date agreed upon in writing by the business receiving the partial abatement and the governing body of the local government whose tax revenue will be affected by the partial abatement.

3. If the ~~[Commission]~~ ***Office*** grants a partial abatement pursuant to NRS ~~[361.0685 or]~~ 361.0687 ~~[,]~~ ***or 701A.210,*** the ~~[Commission]~~ ***Office*** will immediately forward a certificate of eligibility for the partial abatement that states the percentage and duration of the partial

abatement to the county assessor of each county in which real or personal property used in connection with the business will be located.

Sec. 9. NAC 360.4745 is hereby amended to read as follows:

360.4745 A partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~ ***363B*** of NRS that is approved by the ~~[Commission]~~ ***Office*** for an expanded business:

1. Applies only to the taxes due for the additional employees employed by the business as a result of the expansion of the business.

2. Does not apply to the taxes due for the employees that were employed by the business before the expansion.

Sec. 10. NAC 360.475 is hereby amended to read as follows:

360.475 1. For the purposes of NRS 360.225 ***:*** ~~[, to determine eligibility for a partial abatement of the taxes imposed pursuant to chapter 364A of NRS, a proposed or expanded business which qualifies as an employer pursuant to NRS 612.055 shall be deemed by the Department to have begun operations in this State:~~

~~(a) If the business is a proposed business, on the date on which the business first pays wages to an employee of the business who performs services for the business in this State.~~

~~(b) If the business is an expanded business, on the date on which the business first pays wages to an employee of the business who was not employed by the business before the expansion.~~

~~2.]~~ ***(a)*** To determine the amount of capital investment required pursuant to paragraph (d), (e) or (f) of subsection 2 of NRS 360.750 for a partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~ ***363B*** of NRS:

~~[(a)]~~ *(1)* A capital investment shall be deemed to be any expenditure for ~~[an asset that qualifies as "section 1245 property," as defined in 26 U.S.C. § 1245, if the asset will be used by the proposed business to establish its operations in this State or by the expanded business to expand its operations in this State;]~~ ***eligible machinery or equipment;*** and

~~[(b)]~~ *(2)* The amount paid for such ~~[an asset,]~~ ***eligible machinery or equipment,*** including any capitalized interest, shall be deemed to be the amount of the capital investment for that ~~[asset.]~~ ***eligible machinery or equipment.*** Any finance charge, tax or interest paid for the ~~[asset]~~ ***eligible machinery or equipment*** must not be included in the determination of the amount of the capital investment for that ~~[asset.~~

~~3.]~~ ***eligible machinery or equipment.***

(b) To determine whether a new or expanding business in a city or county satisfies the capital investment requirement set forth in paragraph (d), (e) or (f) of subsection 2 of NRS 360.750 for a partial abatement of the taxes imposed pursuant to chapter 363B of NRS, the business must retain eligible machinery or equipment deemed to be a capital investment pursuant to paragraph (a) at the location of the business in that city or county until at least the date which is 5 years after the effective date of the partial abatement as indicated in the Tax Abatement and Incentive Agreement.

2. A business for which the ~~[Commission]~~ ***Office*** has approved a partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~ ***363B*** of NRS shall, not later than 30 days after the end of the ~~[first]~~ fourth ***calendar*** quarter ~~[in which the business has been in operation after the approval of]~~ ***following the calendar quarter in which*** the partial abatement ~~[,]~~ ***becomes effective as indicated in the Tax Abatement and Incentive Agreement,*** file with the Department on a form prescribed by the Department, a statement that the business has complied with the

requirements of NRS 360.750. ~~[The form must be accompanied by proof that the business has made the capital investment required by the Commission pursuant to NRS 360.750.]~~

Sec. 11. NAC 360.476 is hereby amended to read as follows:

360.476 If an application is approved by the ~~[Commission]~~ ***Office*** for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the period of abatement begins on the ~~[date on which the applicant takes possession of the first delivery of eligible machinery or equipment at the location designated in the certificate of eligibility issued by the Commission. Upon taking possession of such eligible machinery or equipment, the applicant shall immediately notify the Commission and the Nevada Tax Commission.]~~ ***effective date of the partial abatement as indicated in the Tax Abatement and Incentive Agreement.***

Sec. 12. NAC 360.4765 is hereby amended to read as follows:

360.4765 If the ~~[Commission]~~ ***Office*** approves an application for a partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~ ***363B*** or 374 of NRS, the applicant must ~~[employ]~~ ***:***

1. Employ the number of employees required by the ~~[Commission for approval of the application]~~ ***Tax Abatement and Incentive Agreement*** by the ~~[last day of the first]~~ fourth ***calendar*** quarter ~~[that the applicant has been in operation after the partial abatement has been approved by the Commission]~~ ***after the calendar quarter immediately following the calendar quarter in which the partial abatement becomes effective as indicated in the Tax Abatement and Incentive Agreement*** and must continue to employ at least that number of employees for:

~~[1.]~~ ***(a)*** At least 5 years ~~[;]~~ ***after the effective date of the partial abatement as indicated in the Tax Abatement and Incentive Agreement;*** or

~~[2.]~~ *(b)* The period specified in the ~~[agreement executed by the applicant with the Commission pursuant to paragraph (b) of subsection 2 of NRS 360.750,]~~ *Tax Abatement and Incentive Agreement,*

➥ whichever is later. ~~[, after the last day of that fourth quarter.]~~

2. Make any capital investment required by paragraph (d), (e) or (f) of subsection 2 of NRS 360.750 not later than 2 years after the effective date of the partial abatement as indicated in the Tax Abatement and Incentive Agreement. Upon the request of the Department, a business whose application for a partial abatement of the taxes imposed pursuant to chapter 363B or 374 of NRS has been approved by the Office shall provide to the Department all necessary records to verify the capital investment.

Sec. 13. NAC 360.4775 is hereby amended to read as follows:

360.4775 1. If the Department finds that a business for which the ~~[Commission]~~ *Office* has approved an application for a partial abatement of the taxes imposed pursuant to chapter ~~[364A]~~ *363B* or 374 of NRS has failed to continue to meet the requirements for the partial abatement ~~[imposed by the Commission pursuant to]~~ *set forth in* NRS 360.750, the Department shall determine the amount of tax owed to the Department in the manner prescribed in NRS 360.300 to 360.400, inclusive.

2. A business against whom the Department has made such a determination may, in the manner prescribed in NRS 360.300 to 360.400, inclusive, file ~~[an appeal]~~ *a petition for redetermination* with the ~~[Nevada Tax Commission]~~ *Department* for a determination whether the business has substantially complied with the requirements ~~[for the partial abatement approved by the Commission pursuant to]~~ *of* NRS 360.750. *An order by the officer of the*

Department upon the petition for redetermination may be appealed to the Nevada Tax Commission pursuant to NRS 360.390.

Sec. 14. NAC 360.468 and 360.477 are hereby repealed.

TEXT OF REPEALED SECTIONS

360.468 "Commission" defined. (NRS 360.750) "Commission" means the Commission on Economic Development.

360.477 Refund upon approval of application. (NRS 360.750, 364A.170, 374.357)

1. If the Commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 364A of NRS, the applicant is eligible for a refund of any taxes imposed pursuant to chapter 364A of NRS which were paid previously by the applicant and which are subject to the abatement.

2. If the Commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the applicant is eligible for a refund of any taxes imposed pursuant to chapter 374 of NRS which were paid previously by the applicant and which are subject to the abatement, if the Department determines pursuant to NAC 360.4755 that the machinery or equipment qualifies as eligible machinery or equipment and:

(a) If the machinery or equipment was acquired outside this State from a retailer that is not registered with the Nevada Tax Commission, the application for the partial abatement was made:

(1) Before the acquisition of the machinery or equipment; or

(2) After the acquisition of the machinery or equipment and within 60 days after the date on which the taxes on the acquisition imposed pursuant to chapter 374 of NRS were due; or

(b) If the machinery or equipment was acquired from a retailer that is registered with the Nevada Tax Commission, the application for the partial abatement was made within 60 days after the payment of the taxes on the acquisition imposed pursuant to chapter 374 of NRS.