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**Form For Filing
Administrative Regulations**

Agency: Department of Taxation

Permanent Regulation
LCB File No. **R175-22**

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: ADOPTED BY AGENCY

Brief description of action: The Nevada Tax Commission adopted LCB File No. **R175-22** to revise procedures concerning the filing of certain briefs and other documentation in an appeal to the Nevada Tax Commission.

Authority citation other than 233B: NRS 360.090 and NRS 360.245

Notice date: September 1, 2022

Date of Adoption by Agency: October 3, 2022

Hearing date: October 3, 2022

**APPROVED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R175-22

Filed December 29, 2022

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

AUTHORITY: § 1, NRS 360.090 and 360.245.

A REGULATION relating to taxation; revising procedures concerning the filing of certain briefs and other documentation in an appeal to the Nevada Tax Commission; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, all decisions of the Executive Director or other officer of the Department of Taxation are final unless appealed to the Nevada Tax Commission. (NRS 360.245) Existing regulations establish the procedures for pursuing such an appeal, including, without limitation, prescribing the period during which an appellant is required to file his or her opening brief with the Commission. (NAC 360.175) This regulation revises those procedures by prescribing the period for the filing of an answering brief by a respondent and a reply brief by the appellant. This regulation also requires a brief or other documentation filed with the Commission in connection with an appeal be accompanied by an acknowledgement or affidavit showing service of the brief or other documentation on all other parties of record. This regulation authorizes the Commission to dismiss an appeal if certain documentation is not timely filed.

Section 1. NAC 360.175 is hereby amended to read as follows:

360.175 1. The staff, petitioner or a designated representative may, within 30 days after service of the copy of the findings of fact, conclusions of law and decision of the hearing officer, file a notice of appeal with the Commission.

2. Within 30 days after filing a notice of appeal, the appellant shall file with the Commission : ~~a:~~

(a) ~~Brief~~ *An opening brief* setting forth the points relied upon in his or her appeal and authorities in support thereof; and

(b) ~~Designation of~~ *A statement identifying* the parts of the record before the hearing officer that he or she deems relevant to his or her appeal.

3. An appeal from the decision of the hearing officer to the Commission must be based upon one or more of the grounds set forth in subsection 3 of NRS 233B.135.

4. The filing of a notice of appeal does not excuse compliance with the decision of the hearing officer nor suspend the effectiveness of a decision unless otherwise ordered by the hearing officer.

5. *Within 30 days after service of the appellant's opening brief upon a respondent, the respondent shall file with the Commission:*

(a) An answering brief with the Commission; and

(b) A statement identifying the parts of the record before the hearing officer that he or she deems relevant to his or her response.

6. *Within 30 days after service of the respondent's answering brief upon the appellant, the appellant may file with the Commission a reply brief.*

7. After receipt of a notice of appeal, filed in compliance with subsection 1, and the documentation required by ~~subsection~~ *subsections 2, 5 and 6*, the Department will schedule a time for oral argument before the Commission at its next meeting. The oral argument will be limited to a period of time not to exceed 20 minutes unless extended by the Commission. The Commission will not review evidence which was not submitted to the hearing officer unless it determines that good cause exists for a failure to submit the evidence to the hearing officer.

~~16.1~~ 8. The Commission will modify, reverse or affirm the decision of the hearing officer or remand the case to the hearing officer. The Director shall issue a final written decision on behalf of the Commission.

9. A brief and any other documentation filed with the Commission pursuant to subsection 2, 5 or 6 must be accompanied by an acknowledgment of or an affidavit showing service on all other parties of record.

10. The filing deadlines set forth in subsections 2, 5 and 6 may be extended:

(a) By the parties by stipulation; or

(b) By the Chair of the Commission upon written application by the appellant or respondent and a showing of good faith by the moving party.

11. The Commission may dismiss an appeal if the appellant fails to timely file the documentation required by subsection 2.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R175-22

1. A clear and concise explanation of the need for the adopted regulation.

The Department needs this regulation to ensure due process for the taxpayers appearing before the Commission and provide clarity to the parties regarding the appeal process and requirements, including deadlines and responsibilities of the parties (the Department and taxpayers) subject to an appeal to ensure they are timely heard or appropriately dismissed by the Nevada Tax Commission. Decisions of the Department are appealable to the Nevada Tax Commission. The Department is represented by the Nevada Attorney General's Office and taxpayers may represent themselves or have a taxpayer representative present an appeal on their behalf to the Tax Commission. Current regulations are silent or lack clarity regarding duties and timelines for the parties to file responsive briefs to opening appellant briefs, and they do not specify the documentation that is required to be included with the appellant's brief. This has led to inconsistent materials being presented to the Tax Commission during appeals. The existing regulations also did not require proof that all parties have been adequately served with briefs and/or documents, leading to further due process delays. This regulation also provides clarity to the parties regarding stipulations or requests for extensions of time to file briefs and/or documents. The Department needs this regulation to establish clear requirements for pursuing appeals before the Nevada Tax Commission, the failure of which to comply authorizes the Commission to dismiss the appeal.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by issuing a questionnaire to interested parties regarding any impact on small businesses and sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop/Hearing</u>	<u>Number Notified</u>
11/01/21	Workshop	11/15/21	198
9/01/22	Adoption Hearing	10/03/22	198

The mailing list included the interested parties list maintained by the Department. Notices were also posted at the Nevada State Library; Legislative Counsel Bureau; various Department of Taxation locations throughout the State; and at the Main

Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email.

See response to #5 for a summary of the public responses to the Regulation.

A copy of the recorded comments, the record of proceedings, and/or the Small Business Impact Statement may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 1550 College Pkwy. Ste 115, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

- 3. The number of persons who:**
(a) Attended each hearing:
(b) Testified at each hearing:
(c) Submitted written comments:

Workshop date: November 15, 2021

(a) Number in attendance: 0

(b) Number testifying: 0

(c) Written statements submitted: 0

Adoption Hearing date: October 3, 2022

(a) Number in attendance: 19

(b) Number testifying: 1

(c) Written statements submitted: 1

- 4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

Testified at Adoption Hearing:

Name: **George Hritz**

Telephone number: **775-882-2697**

Business address: **116 E. 7th Street, Suite 202, Carson City, NV 89701**

Electronic mail address: hritzg@yahoo.com

Name of entity or organization represented: **Nevada Taxpayers Association**

Provided written public comment for Adoption Hearing:

Name: **Ron Voigt**

Telephone number: **702-321-9245**

Business address: **9769 Trail Rider Drive, Las Vegas, NV 89117**

Electronic mail address: ronvoigt2001@yahoo.com

Name of entity or organization represented: **AAA Team Sales Tax, LLC**

5. **A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

See response to #2 for description of how comments were solicited from affected businesses and an explanation of how interested persons may obtain a copy of the summary.

Summary of public responses: Not Applicable

Summary of workshop discussion: Not Applicable

Summary of Public Comment at Adoption Hearing:

1. George Hritz, Nevada Taxpayers Association:

Provided oral comment, stating “The Nevada Taxpayer’s Association supports the regulation as written. It allows the parties to stipulate to the extended briefing schedule on the appeal to the Commission.”

2. Ron Voigt, AAA Auto Team Sales, LLC:

Provided written comment articulating a concern that the regulation would limit a taxpayer’s right to petition based on a technicality.

A copy of the written and recorded comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 1550 College Pkwy. Ste 115, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

There were changes made to the regulation. Specifically, the following changes were made: 1) Subsection 5 of Section 1, correcting an error clarifying that an answering brief is a response instead of an appeal; 2) New subsection 10 of Section 1, authorizing the parties to stipulate or file a request for an extension of the deadline to file the briefs related to an appeal; and 3) New Subsection 11 of Section 1, authorizing the Nevada Tax Commission to dismiss an appeal for failure to timely file the required documents for an appeal within 30 days.

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. This must include adverse, beneficial, immediate and long-term effects.**

(a) **Estimated economic effect on the businesses which they are to regulate.**

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects on businesses. This regulation continues to ensure due process to any business owner seeking an appeal of a Department decision to the Nevada Tax Commission, while providing clarity to the process.

(b) Estimated economic effect on the public which they are to regulate.

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to the public. The terms of this regulation will only have an effect on taxpayers who seek an appeal of a Department decision to the Nevada Tax Commission. Any possible effect on the public will include streamlining the governmental processes for such appeals.

8. The estimated cost to the agency for enforcement of the proposed regulation:

Enforcement of the adopted regulation presents no significant foreseeable or anticipated cost or decrease in costs.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

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

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

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

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

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