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September 16, 2024

Ms. Sarah Glazner
Management Analyst III
Department of Taxation
3850 Arrowhead Drive
Carson City, Nevada 89706



Re: LCB File No. R152-22

Dear Ms. Glazner,

A regulation adopted by the Nevada Tax Commission has been filed today with the Secretary of State pursuant to NRS 233B.067 or 233B.0675 as appropriate. As provided in NRS 233B.070, this regulation becomes effective upon filing, unless otherwise indicated.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 6 of NRS 233B.070.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Killian".

Asher A. Killian
Legislative Counsel

James W. Penrose
Senior Principal Deputy Legislative Counsel

AAK/amh
Enclosure

SECRETARY OF STATE
FILING DATA

FILED.NV.SDS
2024 SEP 16 AM 9:04

**Form For Filing
Administrative Regulations**

Agency: Department of Taxation

Permanent Regulation
LCB File No. R152-22

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. **R152-22**, to revise provisions relating to the voluntary disclosure of a taxpayer's failure to file a tax return with the Department of Taxation; authorize 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; transfer 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 provide other matters properly relating thereto.

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

Notice date: May 24, 2024

Date of Adoption by Agency: June 25, 2024

Hearing date: June 25, 2024

**APPROVED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R152-22

Filed on September 16, 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 or 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 or 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

~~14.1~~ 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 subsection 2 and NRS 360.300, 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.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R152-22

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

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; 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.

This Regulation is necessary to provide clarity and streamline the process for voluntary disclosures to encourage more taxpayers to voluntarily disclose tax liabilities and ensure compliance with the regulatory requirements. Also, the existing regulations were outdated and did not provide for the voluntary disclosure of tax liability for new taxes implemented since their enactment, including modified business tax, gold and silver excise taxes, and taxes and fees imposed for transportation network companies, passenger carriers and peer-to-peer car sharing. The revisions also make the Department more efficient in its ability to process these applications, which in turn leads to proper filing, additional revenue/collections and less violations in audit.

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>
5/8/24	Workshop	5/23/24	197
5/24/24	Adoption Hearing	6/25/24	201

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

Summary of public responses from Workshop:

1. Yolanda King, Nevada Taxpayers Association:

The Nevada Taxpayers Association, representing Nevada businesses, raised concerns about the processing of payment plans for voluntarily disclosed taxes, the effects of the regulation on waivers of penalty and interest, the consistency of redetermination rights with those following an audit, and the confirmation of appeal rights before the Nevada Tax Commission to contest Department decisions.

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, 3850 Arrowhead Dr., 2nd Floor, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

- 3. The number of persons (not including Department staff or Commission Members) who:**
- (a) Attended each hearing:**
 - (b) Testified at each hearing:**
 - (c) Submitted written comments:**

Workshop date: May 23, 2024

(a) Number in attendance: 7

(b) Number testifying: 1

(c) Written statements submitted: 1

Adoption Hearing date: June 25, 2024

(a) Number in attendance: 13

(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: **Yolanda King**

Telephone number: **702-457-8442**

Business address: **2303 East Sahara Avenue, Suite 102, Las Vegas, NV 89104-4138**

Electronic mail address: yolanda@nevadataxpayers.org

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

Provided written public comment for Adoption Hearing:

Name: **Yolanda King**

Telephone number: **702-457-8442**

Business address: **2303 East Sahara Avenue, Suite 102, Las Vegas, NV 89104-4138**

Electronic mail address: yolanda@nevadataxpayers.org

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

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 responses from affected businesses:

2. Yolanda King, Nevada Taxpayers Association:

The Nevada Taxpayers Association, representing Nevada businesses, raised concerns about the processing of payment plans for voluntarily disclosed taxes, the effects of the regulation on waivers of penalty and interest, the consistency of redetermination rights with those following an audit, and the confirmation of appeal rights before the Nevada Tax Commission to contest Department decisions.

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, 3850 Arrowhead Dr., 2nd Floor, 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.**

The Nevada Tax Commission adopted the regulation without making any changes to the proposed version. The Department addressed the Nevada Taxpayers Association's concerns by referencing existing regulations. It was clarified that the Voluntary Disclosure process is a specific regulatory program that mandates the waiver of penalties and interest when the tax owed is voluntarily disclosed and paid in full.

However, there is a separate regulatory process that allows taxpayers to seek a payment plan if they need assistance paying a determined tax liability. Additionally, existing regulations permit taxpayers to petition for a waiver of penalties and interest upon full

payment of the tax liability. This waiver option is discretionary, whereas the Voluntary Disclosure process mandates the waiver upon full payment of the tax.

Furthermore, Department staff assured Ms. King during the workshop that existing regulations allow for redeterminations of Department decisions, and any Department decision to be appealed before the Nevada Tax Commission under NRS 360.245.

Based upon this feedback to the Nevada Tax Commission, the Commission adopted the language in its original form as consistent with its intent and satisfying the concerns of the public.

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 or long-term economic effects on businesses. There may be beneficial and short-term economic effects on businesses since this Regulation provides more clarity to businesses to voluntarily disclose tax liability, including for tax types not previously captured, to obtain automatic waivers of penalty and interest. It will be difficult to quantify how many businesses currently do not file and will file under this program or with these revisions.

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

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse or long-term economic effects to the public. There may be beneficial and short-term economic effects on the public through increased tax collection for state and local government revenue. However, the amount of such revenue is difficult to quantify and is based upon the number of business entities that file applications.

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.

